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BRIEF SUMMARY

OF THE

LAW OF INTESTATE SUCCESSION IN SCOTLAND;

EMBRACING

TABLES SHEWING DISTRIBUTION OF INTESTATE SUCCESSION IN MOVEABLES AND DESCENT IN HERITAGE.

WITH

AN APPENDIX,

CONTAINING

RELATIVE ENACTMENTS, FORMS OF INVENTORIES, AND SUCCESSION DUTY TABLES.

BY

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SCOTCH LAW AND PARLIAMENTARY AGENT, LONDON.

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TO

HUGH BARCLAY, ESQUIRE, LL.D.,

SHERIFF-SUBSTITUTE OF PERTHSHIRE,

THIS LITTLE WORK IS

BY PERMISSION

RESPECTFULLY INSCRIBED.

PREFACE.

THE object of the following pages is to present, in a popular and inexpensive form, a brief summary of the law of Intestate Succession in Scotland.

Although by no means designed as an exhaustive epitome of the law, I entertain a hope that this Summary may be of some assistance to the Legal Practitioner, as a convenient Handbook on those questions which most frequently arise, and afford facility of reference to books treating of the law in detail.

To persons outside the Legal Profession, who have not easy access to the books treating of this great social and important subject, I venture to hope this Summary of the law will be found useful. It will show them the leading features of the law arranged under distinctive heads, while by means of the Tables the operation of the law in the absence of a will or settlement may be easily ascertained.

The Statutes and Forms in the Appendix are intended to illustrate the body of the Work, and make it more practical for those who consult it.

I did not originally intend this Summary for publication, having written it for my own use in the shape of Memoranda, collected in the course of my reading, and now arranged in its present form. I must therefore crave indulgence for any want of completeness it may present.

P. H. C.

16 St Swithin's Lane, E.C.,
April 1870.

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CHAPTER I.

GENERAL VIEW OF MOVEABLE SUCCESSION; THE APPOINTMENT OF EXECUTORS-DATIVE; THEIR DUTIES AND LIABILITIES.

1. SUCCESSION is the right which arises on a person's death to take the property left by him; and it is of two kinds, and in two forms: succession to Heritable as distinguished from succession to Moveable Property; and Testate as distinguished from Intestate succession.

2. Heritable Property is also termed Heritage or Real Property; and Moveable Property is also called Moveables, or Personal Property. The term Moveables or Personal Property is not synonymous with that of Personal Estate or Personalty in the law of England, though they coincide in many particulars; *Robertson on Personal Succession*, p. 307.

3. Succession is called Testate when a valid will or settlement has been executed and left by a deceased person, regulating the distribution of his estate; Intestate when he has neglected to use this privilege, in which case the law supplies his omission, and distributes his property according to certain established rules; *Ersk.* 3. 8. 2.

4. In successions to Heritable and Moveable Property respectively, these rules of law are quite different and distinct in their application. As a general rule, Heritage descends to the Heir-at-law; Moveables to the Next of Kin (in the enlarged sense now given to the phrase by the Act 18 Vict., cap. 23), or both to one person, if these characters be united; *Bell's Prin.* § 1638.

5. Heritable and Moveable Property must be clearly distinguished in questions between the Heir and Next of Kin: in cases where a portion of the succession is situated beyond Scotland, the character of such portion is determined by the *lex loci rei sitae;* and in the case of incorporeal subjects, as stocks or mortgages, the country where the security was granted, or where the debt or dividend is payable, is for this purpose to be deemed the *situs rei;* 1 *M'Laren*, 19.

6. The Property deemed Moveable in the Law of Succession, consists of things moveable, as ships and their furniture, plate, money, bullion or gold, jewels, pictures, books, household furniture, corn, cattle, implements of husbandry; debts due by bill, promissory-note or account, heritable (31 and 32 Vict., cap. 101, § 117) and personal bonds, where they do not exclude Executors (excepting in questions between husband and wife, or in a confiscation of a person's moveables for certain offences, as to personal bonds, and in these, and in legitim to children as to heritable bonds); shares of companies, public or private, government, bank, and all kinds of stock; partners' shares of the partnership stock, though partly consisting of herit-

able property; the price of lands sold, where the sale is by the owner, not where the sale is by an apparent heir; also *arrears* of feu-duties, rents, and interests, and all arrears of termly payments, whether originally heritable or not; and portions of current rents (but not of fee-simple estates), and other termly payments, are made Moveable by the Apportionment Act, 4 and 5 Will. IV., cap. 22; *Bell's Prin.* §§ 1470–1504; *Ersk.* 2. 2. 7 to 16.

7. Moveable Succession opens by *natural* death only, and the character of the Next of Kin (nearest relations) or personal representatives of the Intestate becomes then irrevocably fixed, without confirmation or other legal process (4 Geo. IV., cap. 98); but it is indispensable to the possession of such character by any person, that such person shall be conceived at the opening of the succession, shall be legitimate, be a subject of the Queen (as settled by 7 and 8 Vict., cap. 66), and be of uncorrupted blood; *Bell's Prin.* §§ 1639–1645.

8. The right of succession to the Moveable Estate of an Intestate is regulated by the law of his permanent residence, or in legal phrase his domicile, at the time of death (*Bell's Prin.* § 1861), without any regard whatever to the place either of the birth or the death, or the situation of the property at the time; *Robertson on Personal Succession*, p. 173. If a convention to that effect be entered into between Her Majesty and a Foreign State, and be followed by an order in Council, no British subject dying in a foreign country will, in a question of succession, be deemed domiciled in such foreign country, unless he shall have been resident there one full year immediately preceding death, and have also deposited in a public office there his declaration of a change of domicile; 24 and 25 Vict., cap. 121, § 1.

9. Though the rights of Succession and Distribution are regulated by the law of the place where the Intestate died domiciled, yet the Executor, in order to gain the active title noticed in § 23, must invest himself with the right to administer, under authority of the proper Courts, or according to the law of the country within which the personal estate is locally situated; *Robertson on Personal Succession*, p. 310.

10. Any person entering into possession of the whole or any part of the moveable estate of a deceased person, without taking care to procure himself legally entered, is held guilty of a supposed or assumed crime, termed *vitious intromission*, to which is annexed the penalty of rendering the intromitter liable for one and all of the deceased's debts; *Bell's Prin.* § 1921. The principle of this appears to be, that the law must protect the deceased's estate from indiscriminate plunder, and will recover it from all concerned in illegally appropriating it; *Ersk.* 3. 9. 35. To prevent incurring the danger of vitious intromission, it is prudent to seal up the repositories, &c., on the occurrence of a death. This act is properly effected by a notary public, clergyman or magistrate, medical attendant, or other respectable person present, not directly interested in the succession. Persons having simply charge of the dying, whose heirs happen to be minors, incur the risk of liability as vitious intromitters if they do not seal or lock up the repositories of those persons as soon as they become insensible; *Ersk.* 3. 9. 56. In certain circumstances, however, vitious intromission may be purged by procuring a legal title within a year and day; *Bell's Prin.* § 1921.

11. The persons entitled or otherwise appointed to administer or wind up the moveable estate of a deceased person are called *Executors*, and their power is supreme in the management of the estate for all concerned therein; *Ersk.* 3. 9. 26. The estate itself is called the *Executry*, and includes all that descends to the deceased's widow, children, or nearest of kin (in the enlarged sense given to the phrase by the Act 18 Vict., cap. 23), and belongs to creditors; *Ersk.* 3. 9. 1.

12. Executors are of two classes—first, those appointed by the deceased himself, who are called *Executors-nominate;* and secondly, Executors appointed by law where none are appointed by the deceased, who are called *Executors-dative; Ersk.* 3. 9. 32. In England, Executors-dative are styled Administrators, and the expression Executors denote the Executors-nominate or Testamentary; *Paterson on English and Scotch Law*, p. 227.

13. The appointment of Executors-dative is made on application by petition to the Sheriff (who acting in that capacity is styled Commissary) of the county wherein the deceased died domiciled, or if he died without any known or fixed domicile in Scotland, or died abroad leaving personal

property in Scotland, the Sheriff of Edinburgh; 4 Geo. IV., cap. 97 (1823); 1 Will. IV., cap. 69 (1830); 1 and 2 Vict., cap. 119, § 26, and 21 and 22 Vict., cap. 56.

14. Persons applying for appointment as Executors-dative are preferred to the office in the following order:—

1. The deceased's General Disponee or Universal Legatory. Such nomination does not vest the party in the office of Executor where there is no express nomination of him to that office by the deceased.
2. His Next of Kin, *i.e.*, surviving children, if any, or the other nearest relations; all in the same degree alive, with the representatives of deceased next of kin, if any, who survived the Intestate (4 Geo. IV., cap. 98, § 1), being entitled to be conjoined in the office if they please, or they may select one person for the office; *Ersk.* 3. 9. 32. The whole blood excludes the half blood in the same degree. When no next of kin compete, the children or descendants of next of kin predeceasing are entitled to confirm. The father, or if he be dead the mother, of the deceased, if the deceased has died unmarried and without issue, may, it is thought, be nominated jointly with the brothers and sisters of the deceased or their descendants. All persons related through the mother, excepting brothers and sisters uterine and their issue, are excluded; 18 Vict., cap. 23, §§ 1, 3, 4, and 5. Pupils who are next of kin may be decerned through a tutor, and minors in their own name or through a curator; but the proper course is to have the pupil or minor himself decerned, and for the guardian to act in his name; *Johnstone*, Feb. 15, 1838, 16 Sh. 541.
3. His Widow, who is called Executrix *qua* Relict.
4. His Creditors who hold liquid documents of debt, *e.g.*, bonds, bills, or the like, or who hold or obtain decrees, called Executors-Creditors; *Bell's Prin.* 1895; Act 1695, cap. 41.
5. His Special Legatees.
6. Judicial Factors under Act of Sederunt of 13th Feb. 1730, § 7; *Bell's Lect.* p. 1042; *Alexander's Practice*, p. 43.

15. With the exception of Executors-nominate, all Executors must find caution to the satisfaction of the Court for their intromissions; 4 Geo. IV., cap. 98. The amount of caution is usually fixed at the sum in the Inventory of the Estate, but on special application with cause shown, and after public advertisement, the Commissaries have power to restrict the caution to a smaller amount. The cautioner is not liable in any case beyond the amount of the inventory; *Murdoch*, Feb. 17, 1826, 4 Sh. 479.

16. The form of procedure in applications to the Commissary (and every Sheriff is Commissary of his county) for the appointment of Executors-dative is regulated by the Act 21 and 22 Vict., cap. 56. The person preferred obtains what is called a Decree-dative, which is the technical name given to the sentence of the Judge conferring on the person the office of Executor, and is precisely equivalent to that of a nomination by the deceased, not followed by the active title noticed in § 22. The main object of the process is to enable the Executor to exhibit upon oath, in the proper Commissary Court, an inventory of the Moveable Estate and Effects of the deceased, on a stamp corresponding to the value, as provided by the Acts 4 Geo. IV., cap. 97 and 98; the further title noticed in § 22 must be obtained to enable him to compel payment of debts due to the deceased; *Ersk.* 3. 9. 27.

17. Before the Executors dispose of or distribute any part of the moveable estate or effects of the deceased person, or uplift any part of the debts due to him, and at all events within six calendar months after they assume the possession and management of the estate, they are required, under certain penalties, to exhibit upon oath in the Commissary Court of the county wherein the deceased died domiciled, or if he died without any fixed or known domicile in Scotland, or died abroad leaving personal property in Scotland, the Commissary Court of Edinburgh (21 and 22 Vict., cap. 56, §§ 3 and 8), a full and true inventory of all the personal and moveable estate and effects of the deceased situated in Scotland, already recovered or known to be existing (48 Geo. III., cap. 149, § 38; 55 Geo. III., cap. 184), including, where the deceased died on or after April 3, 1860, any personal property which he may, under any authority, have disposed of by will, and also money secured on heritable property in Scotland, and money secured by Scotch bonds in favour of heirs and assignees excluding Executors, in

which last case, it may be observed, the bonds are made moveable property only with reference to the liability to stamp-duties; and it is optional to pay the duties exigible in respect thereof—(1) by lodging with the Inland Revenue a "Special Inventory" stamped according to the amount of property contained in it; or (2) by adding the amount of the property to the inventory of the personal estate, and paying stamp-duty on the aggregate amount (23 and 24 Vict., cap. 15, §§ 4 and 6, and cap. 80, §§ 1 and 8), The inventory may also include any personal estate or effects of the deceased situated in England or in Ireland, or both, provided the Commissary shall, by interlocutor, find that the deceased died domiciled in Scotland, that the value of the personal property in England or in Ireland, respectively, shall be separately stated in the inventory, and that the inventory shall be impressed with a stamp corresponding to the entire value of the estate situated within the United Kingdom (21 and 22 Vict., cap. 56, § 9), at the time it shall be sworn to, including the proceeds accrued thereon down to that time; 23 and 24 Vict., cap. 80, § 5. The inventory when given up is recorded in the Commissary Court Books, along with any will or other writing of a testamentary nature which may come into the possession of the Executors. If the inventory is not given up within six months after death, penalties are exigible under the said Statutes, in addition to 5 per cent. from that period on the amount of the duty.

18. Along with the inventory there must be produced by the Executor an oath or affirmation by him that the inventory contains a full and true statement of all the deceased's personal estate wherever situated, so far as known to him, and that the deceased executed no deed relative to the disposal of the estate or any portion thereof other than the deed or deeds, if any, produced. This oath or affirmation must be taken or made in presence of the Commissary or his depute, or the Commissary-Clerk or his depute, or before any Commissioner to be appointed by the Commissary, or before any Magistrate or Justice of the Peace within the United Kingdom or Colonies, or any British Consul; 21 and 22 Vict., cap. 56, § 11. The oath is annexed to the inventory; and after using the proper *ad valorem* stamp of the inventory, any additional matter may be written on plain paper.

19. The inventory requires to be given upon a stamp corresponding to the gross value of the whole personal estate, including moneys secured

in manner mentioned in § 17, without any deduction on account of debts which fall to be paid from the estate. If, however, when all the debts are paid, it appears that an over-payment of duty has been made, the excess is repaid by the Inland Revenue, if applied for within three years; but voluntary debts, payable only on the death of the deceased or under any instrument which shall not have been *bona fide* delivered to the donee thereof three months before the death of such person, and the funeral expenses and those connected with the inventory, are not allowed as deductions. If the estate cannot be realised within three years, the time to apply for return of duty can be extended by the Inland Revenue on application to them for that purpose. Estates of persons dying on or after July 25, 1864, under £100, and the estates of any soldier, seaman, or marine, slain or dying in the service of his country, are exempt from duty; 55 Geo. III., cap. 184, §§ 37, 44, 51; and 22 and 23 Vict., cap. 36, § 1; 24 and 25 Vict., cap. 92, § 3; 27 and 28 Vict., cap. 56, § 5. For Table of Rates of Duty, and other taxes imposed on Succession under the name of Residue, &c., see Appendix.

20. If at any subsequent period in the management of the executry, other effects belonging to the deceased are discovered, inferring payment of further duty, the Revenue Statutes require that the Executors shall, within two calendar months after such discovery, exhibit upon oath an additional inventory of the same, specifying also the value of the estate and effects comprised in the former inventory; 48 Geo. III., cap. 149, §§ 38 and 40. The property in the additional inventory must also be sworn to according to the value thereof at the date when the inventory is given up, including the proceeds that have accrued thereon. It is sufficient that the stamp-duty paid on the original and additional inventory be of the amount corresponding to the total estate; 16 and 17 Vict., cap. 59, § 8. If the total estate, original and additional, would not have required a larger stamp than that originally paid, the additional inventory may be given up on unstamped paper; *Bell's Lect.*, p. 1040.

21. If the estate is given up in the inventory at an over value, and too much duty is paid on that account, a new inventory can be given up and recorded containing the estate at its true value and on the corresponding stamp, and the original inventory will be allowed on affidavit as a spoiled

stamp within six months of the recording of the second inventory; 16 and 17 Vict., cap. 59, § 8.

22. The decree-dative, as already stated, is merely a personal title to enter into possession, and it is therefore necessary, in order to vest the estate contained in the inventory fully in the Executor, and to give him a complete active title to such estate—*e.g.*, to enable him to compel payment of debts due to the deceased, or to compel persons in possession of moveables which belonged to the deceased to give up possession—that he obtain what is called a Confirmation. This title is procured by the Executor-dative producing to the Commissary his extracted decree-dative, or referring to it as in the Records of the Court, and also the stamped inventory of the deceased's whole proper moveable estate, including any moneys due to the deceased secured in manner mentioned in § 17. These papers are then recorded in the Court-Books, and a Testament-dative or Confirmation of the Executor is given by the Court, authenticated by its seal and the clerk's subscription; *Bell's Lectures*, p. 1035. The procedure to be followed in obtaining confirmation is regulated by the Act 21 and 22 Vict., cap. 56; and to make confirmation available as an active title to moveable property situated in England or Ireland, it is necessary (sections 12 and 13) to produce the confirmation in the principal Court of Probate in England or in the Court of Probate in Dublin, and to deposit a copy thereof with the Registrar, accompanied by a certified copy of the interlocutor of the Commissary finding that the deceased died domiciled in Scotland, and to get the confirmation sealed with the seal of such English or Irish Court. Upon the confirmation being so sealed, it has the like force and effect in England or Ireland as if Probate, or Letters of Administration, had been granted by the said respective Courts of Probate. The Court of Probate will not apparently allow its seal to be affixed to an eik or additional confirmation; the proper course in such cases is said to be to obtain a new confirmation, including the whole of the deceased's personal estate in England. See English case of *Hutcheson*, noticed in *Journal of Jurisprudence* for 1864, vol. viii, p. 55.

23. Every person requiring confirmation must confirm the *whole* moveable estate of the deceased person then known to exist, to which such person shall make oath, with power however to eik to such confirmation any part

of such estate that may afterwards be discovered, provided the *whole* of such estate so discovered shall be added upon oath. To this rule, however, there is an exception in the case of Executors-creditors, whose confirmations, as well as the amount of the caution to be found by them, may be limited to the amount of the debt and sum confirmed to which they shall make oath. The application of a creditor for confirmation must be intimated in the *Edinburgh Gazette;* 4 Geo. IV., cap. 98, §§ 3 and 4. Any other creditor may insist on being conjoined in the office, or he may summon the creditor confirmed to communicate what he may have recovered. All creditors confirming within six months of the deceased's death are entitled to share *pari passu ; Bell's Lect.*, p. 1047. Confirmations by creditors may be reduced by sequestration within seven months from the debtor's death; 19 and 20 Vict., cap. 79, § 110.

24. After Executors have been confirmed they possess all the powers which were competent to the deceased when alive, and no person interested in the succession can defeat them in the execution of their office. But no time should be lost by the Executors, after they have obtained confirmation, in taking active measures to realise the intestate's assets and property; and all trust-moneys received by them should be deposited in bank in a separate account. If the bank be in good credit they will not be answerable for losses incurred through its failure; *Seton* v. *Dawson*, 4 D. 328.

25. Executors who give up inventory and obtain confirmation before uplifting the funds or taking possession of the moveables of the deceased are liable for the debts of the deceased only to the extent of the inventory; *Ersk.* 3. 9. 41.

26. In the following cases confirmation is not required to complete the Executor's title:—

1. Where the Executor, or next of kin, or other representative, obtains actual possession of the fund or estate.
2. Where a debtor is willing to pay or deliver without the exhibition of confirmation.
3. Where the deceased executed a special assignation or disposition, though not intimated or published during the deceased's lifetime.

4. Where in a personal bond the substitute is named,—the right vesting by his mere survivance of the institute.
5. *Jus relictae* and legitim vest in the widow and children *ipso jure* but they can only recover from the deceased's debtors through the medium of the Executors; *Bell's Lect.*, p. 1049; *Bell's Prin.* § 1892.

27. When two or more persons have been confirmed Executors, they hold the office *pro indiviso*, and all must concur in suing the deceased's debtors unless it can be shewn that any refuse without good cause; *Barclay's M'Glashan*, p. 131. It would be imprudent to pay to an Executor, where there are more than one, unless the others are parties consenting to the payment; *Ersk.* 3. 9. 40.

28. Where the Executor is a foreigner, he may be sued in the Scotch Courts, on the doctrine known in law as that of Reconvention, the principle of which is, that a party is not entitled to avail himself of the jurisdiction of the Scotch Courts without subjecting himself in these Courts to any incidental claim or counter action arising out of one in dependence between the same parties, or in some way connected therewith; *Barclay's M'Glashan*, p. 75.

29. The office of Executor is personal and not descendible to heirs; on the death of one the office accrues to the survivors or survivor, and falls entirely on the death of the whole, except in cases where the appointment was purely beneficial. Where the office is a mere trust for others, and the executor dies after confirmation, but before realising the whole of the funds, a title must be made up to such funds by an executor *ad non executa; Ersk.* 3. 9. 38; *Bell's Lect.* p. 1045.

30. As a general rule, and unless fully satisfied of its being legally due, Executors should pay no debt of the deceased without the authority of a decree, and in any event not until six months after the deceased's death (*Gardener* v. *Pearson*, Nov. 28, 1816, Fac. Coll.), *a fortiori* they should not till then distribute the estate to the next of kin. After that date they may pay the debts as applied for; *Ersk.* 3. 9. 4 and 45. *Bell's Prin.* § 1900.

31. To the above rule, however, there is an exception in favour of what are called Privileged and Preferable Debts, such as taxes due to the Crown, accounts for medicines and medical attendance on deathbed, funeral expenses (and it is thought suitable mournings for the family), the house-rent of the deceased for the year current at his death; wages due to domestic and farm servants, including reapers and other occasional servants for agricultural labour, for the term current at the death, whether a year, half-year, or a month, the wages of gardeners when they combine out-door labour with domestic service; also the expense of confirmation and management of the executry, &c. (*Ersk.* 3. 9. 46),—all of which may be paid without waiting the expiration of the six months, provided there are sufficient funds to pay all. But the wages or salaries of clerks, or managers of merchants, or manufacturers, or workmen of skilled artisans, are not preferable debts. In a competition, the funeral expenses, accounts for medicines and medical advice on deathbed, are payable equally before the rent or servants' wages; and servants' wages are payable before the rent; *Bell's Prin.* §§ 1403–1409.

32. Executors, being trustees for the general behoof, are liable for money lost by their negligence; they are bound to use care and diligence in the discharge of their office, and to proceed with execution against debtors wherever there would otherwise be danger of loss to the estate; *Allan*, June 24, 1851, 13 D. 1220; *Forman*, Feb. 2, 1853, 15 D. 362.

33. No formal exoneration of an Executor is necessary; if he be sued by creditors or others interested, he may competently plead that the inventory in the confirmation is exhausted by lawful payments, not by mere decrees ordaining him to make payment. If there be any debts given up in the inventory as due to the deceased which have not been received by the Executor, he will be exonerated as to these by producing decrees against the debtors, and by assigning such decrees to the creditors so suing him *Ersk.* 3. 9. 47.

Chapter II.

TABLE SHEWING DISTRIBUTION OF MOVEABLE ESTATE OF PERSONS DYING WITHOUT A WILL OR SETTLEMENT.

(*a*) Where Husband dies:—

1. Survived by Wife and Children.
2. Survived by Wife without Children.
3. Predeceased by Wife leaving Children.
4. Predeceased by Wife without Children; or a Person dies unmarried.

(*b*) Where Wife dies:—

5. Survived by Husband and Children.
6. Survived by Husband without Children.
7. Predeceased by Husband leaving Children.
8. Predeceased by Husband without Children: or a Person dies unmarried.

When the whole Moveable Property of the intestate has been collected and realised by the Executor, and the debts and all charges against the succession have been paid, the residue or remainder will fall to be distributed in the following manner:—

	If Intestate die leaving	Personal Representatives take as follows—
		1. Husband dying survived
1.	Wife and Child or Children.....	One-third to Wife as *jus relictae;* one-third to Child or Children as legitim; and the remaining third (or dead's part) to his child or children as Next of Kin.
2.	Wife, Children, and Issue of predeceased children	One-third to Wife as *jus relictae;* one-third to surviving Children as legitim; and the remaining third (or dead's part) between the Children and the Issue of predeceased children; the former taking *per capita,* and the latter *per stirpes.*

REMARKS.

by Wife and Children.

Vide Remarks 6, 4, 7, 56, and Rule I. page 44. *Jus relictae* and legitim are provisions accruing by law to the Widow and Children of a person dying domiciled in Scotland out of his moveable estate, wherever situated. Both rights vest by survivance, without confirmation, and are incapable of being defeated by any deed of the husband to take effect after his death; *Ersk.* 3. 9. 30; *Bell's Prin.* §§ 1582, 1591. They may be barred however, by the substitution of conventional provisions in their stead in antenuptial contract of marriage, with an express exclusion of the legal rights; or this is sometimes done by postnuptial or separate trust-disposition, bond of provision or other deed, though the legal effect of the latter is different from that of the antenuptial; *Bell's Prin.* §§ 1587, 1591; *M'Laren on Succession*, vol. i, pp. 128–137; *Bell's Lect.* p. 799. Where both claims are discharged or compensated the succession becomes burdened with the conventional in place of the legal provisions; and upon payment thereof, or in the absence of any deed or deeds by which the legal claims of the wife and children are cut off by the acceptance of other provisions, then upon payment of such legal claims or provisions, the residue is what is called "Dead's Part," or that portion of the moveable succession which the husband could have validly disposed of by will; *Ersk.* 3. 9. 15; *Bell's Prin.* §§ 1581–1592. When children renounce their legitim they are still entitled to their share of dead's part, but the wife takes no share of dead's part. The discharge by a child of its legitim operates in favour of the other children who have not discharged; not of the father. If all the children discharge, the effect is the same as if there were no children. Advances to a child must be accounted for before drawing share of legitim, unless the father otherwise direct; *Bell's Prin.* §§ 1588–1590; *Ersk.* 3. 9. 25. An advance is only counted as part payment of the share of legitim, but not of the child's share of the dead's part; *Keith's Trustees* v. *Keith*, 29 Scot. Jurist, 497.

Vide Remarks 6, 1, 4, 7, 56, 8, and Rule I, page 44. There is no representation in legitim; it is not due to grandchildren, only to immediate children existing at the father's death; and they, by receipt of legitim, are not deprived of their share of dead's part in the capacity of nearest of kin; *Ersk.* 3. 9. 17. The issue of predeceasing children are entitled to a share of the dead's part, in virtue of the 1st section of the Moveable Succession Act 1855 (18 Vict., c. 23), which provides that "where any person who, had he survived the intestate, would have been among his next of kin, shall have predeceased such intestate, the lawful child or children of such person so predeceasing shall come in the place of such person, and the issue of any such child or children, or of any descendant of such child or children who may in like manner have predeceased the intestate, shall come in the place of his or their parent predeceasing, and shall respectively have right to the share of the moveable estate of the intestate to which the parent of such child or children, or of such issue if he had survived the intestate, would have been entitled: Provided always that no representation shall be admitted among collaterals after brothers' and sisters' descendants."

	If Intestate die leaving	Personal Representatives take as follows—
		I. Husband dying survived by
3.	Wife and Grandchildren.....	Half to Wife as *jus relictae;* and half to Grandchildren in equal shares.
4.	Wife and his Children by two or more marriages.....	One-third to Wife as *jus relictae;* one-third to whole Children as legitim; and remaining third (or dead's part) to them as Next of Kin.
5.	Wife and Children by her last and a former marriage.....	One-third to Wife as *jus relictae;* one-third to Intestate's Children as legitim; and remaining third to them as Next of Kin.
		II. Husband dying survived
6.	Wife only.....	Half to Wife as *jus relictae;* the other half being dead's part goes to the Next of Kin of the Intestate.
		III. Husband dying predeceased
7.	Children.....	Whole to Children in equal shares; half as legitim and the other, being dead's part, as Next of Kin.

REMARKS.

Wife and Children, *continued.*

Vide Remarks 6, 1, 7, 9, 56, and Rule I, page 44. There being no children, one-half is dead's part, to which the grandchildren succeed equally *per capita*, as next of kin of the intestate, and not by way of representation; *Bell's Prin.* § 1861; *Ersk.* 3. 9. 2; *Turner*, Nov. 27, 1869, 8 Macph. 222.

Vide Remarks 6, 1, 7, 56, and Rule I, p. 44. All the father's existing children, of whatever marriage, including those legalised by the subsequent marriage of the parents and those born after the father's death, are entitled to a share of legitim, unless they have renounced or been paid their legitim by the father; *Bell's Prin.* § 1583; *Ersk.* 3. 9. 17.

Vide Remarks 6, 1, 4, 7, 56, and Rule I, page 44. The wife's children of a former marriage have no part in the succession of the husband; *Bell's Prin.* § 1579.

by Wife without Children.

Vide Remarks 1, 9, 46, and Rule II, page 44. The *jus relictae* amounts to one-third of the free moveable estate where there are children surviving the dissolution of the marriage, and to one-half where there are no surviving children; *Bell's Prin.* § 1579. But under no circumstances is the wife entitled to more than one-half of the moveable estate of the husband; *Ersk.* 3. 9. 23. The next of kin of an intestate are those who are next in degree of blood or nearest relatives to him; *Ersk.* 3. 9. 2.

NOTE.—The *jus relictae* being a debt or indefeasible legal right emerging to the widow on the husband's decease, falls to be deducted from his moveable estate in every case before a division takes place amongst his next of kin. Upon such deduction being always made, the residue will be divided in the same manner as the whole free moveable estate of the intestate would have been divisible if the *jus relictae* had been barred or satisfied by marriage-settlement or other deed, or as if he had left no wife surviving him; see Division IV, *infra.*

by Wife leaving Children.

Vide Remarks 1, 4, 56, 9, and Rule III, page 44; *Bell's Prin.* §§ 1581, 1592; *Ersk.* 3. 9. 19. If the intestate leaves both heritable and moveable property, the heir-at-law is excluded from a share of the moveables, unless he chooses to collate, *i.e.*, throw the heritage—or, in case of an heir of entail, the value of his life interest in the estate—into the common stock, and insist for an equal share of the aggregate with the next of kin, or other personal representatives; *Bell's Prin.* §§ 1910, 1912. If the heir be sole executor, he is not bound to collate with the widow; *Bell's Prin.* § 1911. Formerly, the heir at law was not entitled to collate unless he was next of kin; *Ersk.* 3. 8. 77. But now, by the 2d section of the Moveable Succession Act 1855, where B., a person

	If Intestate die leaving	Personal Representatives take as follows—
		III. Husband dying predeceased
8.	Children and Issue of predeceased Children.....	Half to Children as legitim, and remaining half between Children *per capita*, and Issue of those deceased *per stirpes*.
9.	Grandchildren.....	Equally.
10.	Children by two or more marriages by him.....	Whole to Children of whatever marriage, in equal shares; half as legitim, and half as Next of Kin.
11.	Children by Wife's last and a former marriage.....	Whole to Children of Intestate's marriage; half as legitim, and half as Next of Kin.

REMARKS.

by Wife leaving Children, *continued.*

predeceasing the ancestor A., would have been heir, B.'s child, being B.'s own heir-at-law, is entitled to collate; and if B.'s child refuse to collate, the brothers and sisters of B.'s child, and their descendants, shall take a share of the moveable estate equal to the excess in value which they thereby lose. There is no obligation to collate heritage coming from the mother in order to authorise her heir to participate in the moveable estate of the father, nor *vice versa; Bell's Lect.* 799. The heir is entitled to a share of the moveables where he claims personal succession under a will or deed, or receives heritage from a stranger, or takes as heir of provision, who is not heir *alioqui successurus; Bell's Prin.* § 1912. The doctrine of collation applies to collaterals as well as to direct succession; *Ersk.* 3. 9. 3.

Vide Remarks 1, 4, 56, 7, 2, and Rule III, page 44. *Per capita* means per head, or that the parties shall share and share alike; *per stirpes* means per family, or that the children of each child deceased shall collectively take the share of such child by representation.

Vide Remarks 3, 46, and Rule III, page 44. The principle of succession to personal estate is that of equal distribution among those who are next in degree of blood, or next in kin to the intestate; where therefore the next of kin are all equal in degree, whether nearer or more remote, they succeed equally *per capita*, and that without distinction of age or sex, without any preference of males over females, without any advantages accruing to the elder over the younger; *Bell's Prin.* § 1861; *Ersk.* 3. 9. 2. But where there are personal representatives in different degrees entitled to share, the representatives in the remoter degrees take *per stirpes*, being entitled to the same share of the Intestate's estate which their parents would have had, if such parents had lived. *E.G.*, If the Intestate has three brothers, A., B. and C., and at his death one of them (say A.) be dead leaving children, and B. and C. be living, the estate shall be divided into three equal parts, of which B. and C. take one part each *per capita*, and the third part shall be divided among the children of A., who take his share *per stirpes*, as his representatives standing in his place. But this principle of representation is limited to descendants of the Intestate and his brothers' and sisters' (including consanguinean and uterine) descendants, and the rule is subject to contingent exceptions in the collateral line in favour of the father and mother of the Intestate, if alive; 18 Vict., cap. 23, §§ 1, 3, 4, 5.

Vide Remarks 1, 4, 7, 9, 56, and Rule III, page 44.

Vide Remarks 1, 4, 7, 9, 5, 56, and Rule III, page 44; *Bell's Prin.* § 1579.

	If Intestate die leaving	Personal Representatives take as follows—
		IV. Husband dying predeceased by
12.	Father only.....	Half to Father under Succession Act 1855, and remaining half to him at common law.
13.	Mother only.....	One-third to Mother, and remaining two-thirds to Next of Kin of Intestate; and, failing such kin, the Crown succeeds in preference to maternal relations.
14.	Father and Mother.....	Half to Father under Succession Act 1855, and remaining half to him at common law.
15.	Father, Mother, and Brothers or Sisters	Half to Father under Succession Act 1855, and half to Brothers or Sisters in equal shares.
16.	Father, and Brothers or Sisters.....	Half to Father under Succession Act 1855, and half to Brothers or Sisters in equal shares.
17.	Mother, and Brothers or Sisters.....	One-third to Mother, and two-thirds to Brothers or Sisters in equal shares

REMARKS.

Wife without Issue; or a Person dying unmarried.

The father takes one-half of the free succession in virtue of the 3d section of the Moveable Succession Act 1855, which provides that where any person dying intestate shall predecease his father, without leaving issue, his father shall have right to one-half of his moveable estate in preference to any brothers or sisters, or their descendants, who may have survived such intestate. By the interpretation clause in the Act the term, "moveable estate," is held to mean and include the whole *free* moveable estate on which the deceased might have tested. Where, therefore, the intestate leaves a widow, the father would succeed to one-fourth only of the succession under this section, as the widow's provision is of the nature of a debt, and requires to be previously deducted. The father takes at common law if there be no brothers or sisters of the deceased, or descendants of them; *Ersk.* 3. 8. 9, and 3. 9. 2.

Vide Remarks 12, 9. The mother takes one-third under the 4th section of the Moveable Succession Act 1855, which provides that where an intestate dying without leaving issue, whose father has predeceased him, shall be survived by his mother, she shall have right to one-third of his moveable estate in preference to his brothers and sisters or their descendants or other next of kin of such intestate. With this exception, and also the exception made by the section quoted in Remark 37, neither the mother nor maternal relations ever succeed in moveables, but children succeed to and through their mother; *Bell's Prin.* § 1861; *Ersk.* 3. 8. 9, and 3. 9. 2. The separate relations of one spouse never succeed to those of the other: *e.g.*, if the Intestate had a son and daughter, and they both predeceased him, the former leaving a wife and the latter a husband, but without issue in either case, such wife and husband respectively would have no claim on the Intestate's death; *Bankton*, 3. 4. 28.

Vide Remarks 12, 13.

Vide Remarks 12, 13, 9, 27, 46; *Ersk*, 3. 8. 9, and 3. 9. 2.

Vide Remarks 12, 9, 27, 46.

Vide Remarks 13, 9, 27, 46.

	If Intestate die leaving	Personal Representatives take as follows—
		IV. Husband dying predeceased by
18.	Father, Mother, Brothers or Sisters, and Children of predeceased Brothers or Sisters	Half to Father under Succession Act 1855, and half between Brothers or Sisters *per capita*, and Children *per stirpes*.
19.	Father, Brothers or Sisters, and Children of predeceased Brothers or Sisters	Half to Father under Succession Act 1855, and half between Brothers or Sisters *per capita*, and Children *per stirpes*.
20.	Mother, Brothers or Sisters, and Children of predeceased Brothers or Sisters	One-third to Mother, and two-thirds between Brothers or Sisters *per capita*, and Children *per stirpes*.
21.	Father, Mother, and Children of predeceased Brothers or Sisters	Half to Father under Succession Act 1855, and half to Children in equal shares.
22.	Father, and Children of predeceased Brothers or Sisters	Half to Father under Succession Act 1855, and half to Children in equal shares.
23.	Mother, and Children of predeceased Brothers or Sisters	One-third to Mother, and two-thirds to Children in equal shares.
24.	Father, Mother, Children and Grandchildren of predeceased Brothers or Sisters	Half to Father under Succession Act 1855, and remaining half between Children *per capita* and Grandchildren *per stirpes*.
25.	Father, Children and Grandchildren of predeceased Brothers or Sisters..	Half to Father under Succession Act 1855, and remaining half between Children *per capita* and Grandchildren *per stirpes*.
26.	Mother, Children and Grandchildren of predeceased Brothers or Sisters...	One-third to Mother, and two-thirds between Children *per capita* and Grandchildren *per stirpes*.
27.	Brothers or Sisters only	Whole to them, in equal shares.

REMARKS.
Wife without Issue; or a Person dying unmarried, *continued.*
Vide Remarks 12, 13, 9, 27, 2, 8, 46.
Vide Remarks 12, 9, 27, 2, 8, 46.
Vide Remarks 13, 9, 27, 2, 8, 46.
Vide Remarks 12, 13, 9, 46. The children succeed equally, as being all in the same degree of relationship to the intestate; *Bell's Prin.* §§ 1861, 1963.
Vide Remarks 12, 9, 21, 46.
Vide Remarks 13, 9, 21, 46.
Vide Remarks 12, 13, 9, 21, 2, 8, 46.
Vide Remarks 12, 9, 21, 2, 8, 46.
Vide Remarks 13, 9, 21, 2, 8, 46.
Vide Remarks 9, 46. On the failure of lineal descendants, brothers or sisters succeed at common law as next of kin; *Ersk.* 3. 8. 8. But to this rule the two contingent exceptions mentioned in Remarks 12 and 13 have been made by the Moveable Succession Act of 1855.

	If Intestate die leaving	Personal Representatives take as follows —
		IV. Husband dying predeceased by
28.	Brothers or Sisters, and Nephews or Nieces, Children of predeceased Brothers or Sisters.....	Brothers or Sisters *per capita* and Children *per stirpes.*
29.	Brothers or Sisters and Grandnephews or Nieces, Children of predeceased Brothers' or Sisters' deceased Children	Brothers or Sisters *per capita*, and Children equally *per stirpes*, the shares which their respective Parents would have taken if they had survived the Intestate.
30.	Brothers or Sisters, Nephews or Nieces, and Grandnephews or Nieces, Children of predeceased Brothers or Sisters and of their deceased Issue	Brothers or Sisters *per capita*, Nephews or Nieces *per stirpes*, and Grandnephews or Nieces *per stirpes*, the shares which their respective parents would have taken had they survived the Intestate.
31.	Nephews or Nieces, Children of predeceased Brothers or Sisters	Equally.
32.	Grandnephews or Nieces, Children of predeceased Brothers or Sisters deceased Children.....	Equally.
33.	Nephews or Nieces, and Grandnephews or Nieces, Children of predeceased Brothers or Sisters, and of their deceased Issue	Nephews or Nieces *per capita*, and Grandnephews or Nieces *per stirpes.*
34.	Brothers or Sisters german and Brothers or Sisters consanguinean	Whole to Brothers or Sisters german, in equal shares.
35.	Brothers or Sisters consanguinean and Brothers or Sisters uterine	Whole to Brothers or Sisters consanguinean, in equal shares.
36.	Brothers or Sisters consanguinean and Uncles or Aunts.....	Whole to Brothers or Sisters, in equal shares.

REMARKS.
Wife without Issue; or a Person dying unmarried, *continued.*
Vide Remarks 27, 9, 2, 8, 46.
Vide Remarks 27, 9, 2, 8, 46.
Vide Remarks 27, 9, 2, 8, 46.
Vide Remarks 21, 9, 46.
Vide Remarks 9, 46.
Vide Remarks 9, 21, 2, 8, 46.
Vide Remarks 9, 43, 46. Consanguinean relations are persons born of the same father, but not of the same mother, and are called half blood consanguinean; *Bell's Prin.* § 1654. Among collaterals, relatives of the full blood exclude those of the half blood in the same line of succession, but the half blood of a nearer line of succession to a certain extent excludes the full blood of a more remote line; *Ersk.* 3. 9. 2, and 4; *Bankton* 3. 4. 17, and 28. Relationship of the half blood consanguinean is reckoned to extend as far as the evidence of propinquity can reach; *Ersk.* 3. 10. 2.
Vide Remarks 9, 13, 34, 37, 46. Brothers and sisters uterine succeed after, but not equally with, brothers and sisters consanguinean, provided the father and mother are both dead; but they never take more than one-half of the dead's part.
Vide Remarks 9, 27, 34, 46.

	If Intestate die leaving	Personal Representatives take as follows—
		IV. Husband dying predeceased by
37.	Brothers or Sisters uterine and Uncles or Aunts.....	Half to Brothers or Sisters, and half to Uncles or Aunts.
38.	Father and Brothers or Sisters consanguinean and uterine.....	Half to Father under Succession Act 1855, and half to Brothers or Sisters consanguinean.
39.	Mother and Brothers or Sisters consanguinean and uterine.....	One-third to Mother, and two-thirds to Brothers or Sisters consanguinean.
40.	Father, Mother, and Uncles or Aunts.....	Whole to Father at common law.
41.	Father and Uncles or Aunts.....	Whole to Father at common law.
42.	Mother and Uncles or Aunts.....	One-third to Mother, and two-thirds to Uncles or Aunts.
43.	Mother, Uncles or Aunts, and Cousins german, Children of predeceased Uncles or Aunts.....	One-third to Mother, and two-thirds to Uncles or Aunts.
44.	Father and Cousins german.....	Whole to Father at common law.
45.	Mother and Cousins german.....	One-third to Mother, and two-thirds to Cousins in equal shares.
46.	Grandnephews or Nieces and Cousins german.....	Whole to Grandnephews or Nieces, in equal shares.
47.	Brothers' Grandchildren and Brothers' or Sisters' consanguinean.....	Whole to Brothers' Grandchildren in equal shares.
48.	Cousins german and Children of predeceased Cousins german.....	Whole to Cousins german, in equal shares.
49.	Uncles or Aunts and Children of Great Uncles or Aunts.....	Whole to Uncles or Aunts, in equal shares.

REMARKS.

Wife without Issue; or a Person dying unmarried, *continued.*

Vide Remarks 13, 9, 51, 46. Brothers or sisters uterine, *i.e.*, by the mother only, take under the 5th section of the Moveable Succession Act 1855, which provides that where an intestate dying without leaving issue, whose father and mother have both predeceased him, shall not leave any brother or sister german or consanguinean, nor any descendant of a brother or sister german or consanguinean, but shall leave brothers and sisters uterine, or a brother or sister uterine, or any descendant of a brother or sister uterine, such brothers and sisters uterine, and such descendants in place of their predeceasing parent, shall have right to one-half of his moveable estate, *i.e.*, free moveable estate.

Vide Remarks 12, 9, 51, 34, 35, 46. Brothers and sisters consanguinean succeed before the father at common law; *Ersk.* 3. 9. 2.

Vide Remarks 13, 9, 34, 35, 46.

Vide Remarks 12, 13, 9, 51, 46.

Vide Remarks, 12, 9, 51, 46.

Vide Remarks 13, 9, 51, 46.

Vide Remarks 13, 9, 48, 51, 46. Those born or descended of the same father and mother are said to be connected in full blood, or german; *Bell's Prin.* § 1651.

Vide Remarks 12, 9, 43, 51, 46.

Vide Remarks 13, 9, 43, 51, 46.

Vide Remarks 9, 43. The degree of relationship in which the respective parties stand to the deceased will be seen from the Order of Succession below, page 46.

Vide Remarks 9, 34, 46.

Vide Remarks 9, 2, 43, 46. No representation is admitted among collaterals after brothers' and sisters' descendants; *Bell's Prin.* § 1861. Hence, in the succession of ascendants, their collaterals and descendants, the nearest in decree of blood or next of kin to the deceased take the whole, and those who are equal in decree take equally.

Vide Remarks 9, 13, 51, 48, 46.

	If Intestate die leaving	Personal Representatives take as follows—
		IV. Husband dying predeceased by
50.	Great Uncle's or Aunt's Children and Children of Cousins german.....	Whole to Children of Cousins german, in equal shares.
51.	Grandfather and Uncles or Aunts.....	Whole to Uncles or Aunts, in equal shares.
52.	Grandfather and Uncles or Aunts consanguinean.....	Whole to Uncles or Aunts consanguinean, in equal shares.
53.	Grandfather, Grandmother, and Great Uncles or Aunts.....	Whole to Grandfather.
54.	Grandfather, Grandmother and Mother	One-third to Mother; and two-thirds to Grandfather.
55.	Great Grandfather and Great (or Grand) Uncle's or Aunt's Children.....	Whole to Children in equal shares.
56.	Great Grandfather, Great Grandmother, and Brother's or Sister's Illegitimate Children.....	Whole to Great Grandfather.
57.	Father's Father and Mother's Mother	Whole to Father's Father.

REMARKS.

Wife without Issue; or a Person dying unmarried, *continued.*

Vide Remarks 9, 13, 51, 43, 46.

Vide Remarks 13, 46. The rule of law is, that when a person dies without leaving descendants or collaterals, or the descendants of collaterals (brothers or sisters in "side lines"), the father succeeds at common law (and not merely under the Moveable Succession Act 1855); and failing the father, *his* collaterals succeed, then the descendants of his collaterals; and failing them, then the remoter ascendants shall take. These father's collaterals would of course be uncles and aunts of the deceased, these their descendants' nephews and nieces; and it is only failing the father and his collaterals and their descendants that the grandfather succeeds; failing him, his next collaterals succeed; and failing them, their descendants next in order, and so on upwards as far as propinquity can be traced; *Ersk.* 3. 8. 9, and 3. 9. 2.

Vide Remarks 13, 34, 51, 46.

Vide Remarks 13, 51, 46.

Vide Remarks 13, 46.

Vide Remarks 13, 51, 48, 46.

Vide Remark 13. Illegitimate children do not succeed *ab intestato* even to their own father or mother, as succession is through the father only, and illegitimate children in the eye of the law have no father; *Ersk.* 1. 6. 51. A child may be legitimated by the subsequent marriage of the parents, and in such cases it is legitimate for all purposes. But where the child is born in a country where his parents are domiciled, and where the law of legitimation by subsequent marriage (*subsequens matrimonium*) is unknown, such child is deemed illegitimate in Scotland; *Aikman* v. *Aikman*, 3 Macq. App. 854. If a bastard leave neither wife nor children, his moveable property on his death, failing disposition by will, falls to the Crown; *Ersk.* 3. 10. 6; 6 Will. IV., cap. 22. But by Royal letters of legitimation, those who would have succeeded if the bastard had been legitimate may acquire a right to take his succession as if legal heirs; *Bell's Prin.* § 2064.

Vide Remark 13.

	If Intestate die leaving	Personal Representatives take as follows—
		V. Wife dying survived by
58.	Husband and Children of marriage.....	Whole to Husband.
59.	Husband, Children of marriage, and Issue of deceased Children.....	Whole to Husband.
60.	Husband and Grandchildren.....	Whole to Husband.
61.	Husband and Children by the Wife's last and a former marriage.....	Whole to Husband.
		VI. Wife dying survived by
62.	Husband.....	Whole to Husband.

REMARKS.

Husband and Children.

Vide Remarks 59, 61, 62, and Rule V, page 45. Legitim is due on the father's death only; *Bell's Prin.* 1583; *Ersk.* 3. 9. 21.

Vide Remarks 58, 61, 62, and Rule V, page 45. The children take no share of the communion of goods on their mother's death, neither have they any indefeasible claims by law on any separate estate belonging to their mother; failing disposal, they succeed as her heirs or next of kin; *Bell's Lect.* p. 800.

Vide Remarks 62, 61, and Rule V, page 45.

Vide Remarks, 62, 56, 59, and Rule V, page 45. A wife's children by a prior marriage have no right in competition with the surviving husband. But if the wife had any separate estate not included in the communion of goods, such estate will fall to all her children in the same way, and subject to the same contingent exceptions as affect the right of succession to the husband's dead's part; *Bell's Lect.* pp. 797, 798. If the children or any of them shall be under age at the death of the mother, the shares of such minor children shall remain with their father, as administrator or manager for them, till they respectively attain to twenty-one years of age; but this power of administration cannot extend to the shares of the wife's children by a former marriage; *Ersk.* 3. 9. 21. The wife's next of kin are entitled to be her executors-dative; *Leighton* v. *Russell*, 25 Scot. Jur. 63; but they cannot now claim anything as her *jus relictae.*

Husband without Children.

The 6th section of the Moveable Succession Act 1855 provides that, where a wife shall predecease her husband, the next of kin, executors, or other representatives of such wife, whether testate or intestate, shall have no right to any share of the *goods in communion*, nor shall any legacy or bequest or testamentary disposition thereof by such wife affect or attach to the said goods or any portion thereof. If she leave separate estate, however, her next of kin, or executors, are entitled to it; *Bell's Lect.* pp. 797–798.

	If Intestate die leaving	Personal Representatives take as follows—
		VII. Wife dying predeceased
63.	Children	Whole to Children in equal shares.
64.	Children and Issue of predeceased Children	Whole between Children *per capita* and Issue of deceased Children *per stirpes*.
65.	Children of Husband's last and a former marriage	Wholly to Children of Wife's marriage, in equal shares.
66.	Children by two or more marriages of Wife	Equally.
		VIII. Wife dying predeceased by Husband without
67.	The Succession (subject to the contingent exceptions mentioned in Remarks 12, 13, and 37, *supra*) will fall to be divided among her own relatives in the same degree of consanguinity in equal shares, with representation among descendants and collaterals in competition with those who are nearer in degree. See Division IV, *antea*.	

REMARKS.
by Husband leaving Children.
Vide Remarks 21, 9, 7, 56, and Rule VII, p. 45.
Vide Remarks 21, 9, 2, 7, 8, 56, and Rule VII, p. 45.
Vide Remarks 9, 21, 7, 56, 66, and Rule VII, p. 45.
Vide Remarks 21, 9, 7, 56; *Bell's Prin.* § 1591; *Bell's Lectures,* p. 797.
Children; or a Person dying Unmarried.
Vide Remarks 9, 51, 48, 46; *Bell's Prin.* § 1861; *Ersk.* 3. 9. 2.

Chapter III.

SUMMARY OF GENERAL RULES IN MOVEABLE SUCCESSION.

1. Husband's Marital Rights, and how excluded. | 2. Subjects comprehended under term Communion of Goods.

3. Rules regulating division of Moveable Estate.

(*a*) Where Husband dies:—

1. Survived by Wife and Children.
2. Survived by Wife without Children.
3. Predeceased by Wife leaving Children.
4. Predeceased by Wife without Children; or a Person dies Unmarried.

(*b*) Where Wife dies:—

1. Survived by Husband and Children.
2. Survived by Husband without Children.
3. Predeceased by Husband leaving Children.
4. Predeceased by Husband without Children; or a Person dies Unmarried.

1. At common law there arise to the Husband, on the celebration of marriage, two legal rights in regard to his wife's moveable property. One of these is called *jus mariti*, which operates as an assignation to the husband of, generally, the whole moveable property then vested, or that may vest, in the wife during the marriage; *Bell's Prin.* § 1561; *Bell's Lect.* pp. 122, 792. The other is called *right of administration*, which constitutes the husband the wife's curator and manager of the whole estate not falling to him absolutely by his *jus mariti*; *Bell's Lect.* pp. 122, 794; *Bell's Prin.* §§ 1563, 1609. These legal rights are, however, liable to be effectually excluded by:—

1. Conveyances to Trustees or otherwise for her behoof in an antenuptial contract or other deed executed by the wife before marriage; *Ersk.* 1. 6. 13; *Bell's Lect.* p. 124.
2. Deed executed by the husband himself, before marriage, renouncing his marital rights wholly or as to a particular subject; *Bell's Lect.* p. 124; *Ersk.* 1. 6. 13, *et seq.*
3. Third parties either before or after marriage conveying or bequeathing moveable property to the wife, or to Trustees or otherwise for her behoof, in terms importing an exclusion of her husband's legal rights; *Bell's Lect.* p. 124; *Ersk.* 1. 6. 13; *M'Laren on Succession*, vol. ii, p. 60, *et seq.*

4. In a modified sense by the wife availing herself of the provisions of the Conjugal Rights Amendment Act of 1861 (24 *and* 25 *Vict.* *c.* 86; *Bell's Lect.* pp. 124, 793), by which, under certain contingent provisions expressed in the Act, she may obtain from the Court an order of protection against her husband and his creditors of:—

(1) Property which she has acquired or may acquire by her own industry, and which she has succeeded or may succeed to:—

(*a*) After being deserted by her husband; or

(*b*) After she has obtained a judicial separation from her husband. Property so acquired, it is declared by the Act, shall be held and considered as property from which the *jus mariti* and right of administration of the husband are excluded, and shall, on the wife's death, intestate, pass to her heirs and representatives in like manner as if the husband had then been dead.

(2) A reasonable provision for her maintenance and support out of property to which she succeeds or acquires right by donation, bequest, or any other means than by the exercise of her own industry; provided she claims the property before the husband has obtained possession of it, or before it is attached by his creditors.

2. When none of these contingencies shall have arisen, and the said Act has not been put in operation, the whole of the moveable property vested and to vest in the wife during marriage, including rents of lands, interest of money on bonds and annuities, but excepting the wife's wearing apparel, the chests for holding the same, and ornaments proper to her person, all called her *paraphernalia* (*Bell's Lect.* p. 792; *Bell's Prin.* § 1555), and which remain at her own disposal by will—falls to the husband *jure mariti*, and goes to form, in conjunction with his own moveable estate, a copartnership stock called Communion of Goods, in which the husband and wife and their children, if any, are jointly interested, but which is, during marriage, under the uncontrolled power of the husband as regards transactions made *in liege poustie*, to take effect during his life, but not as regards bequests or donations by any fraudulent or any testamentary deed (*Bell's Prin.* § 1584); his power of disposal by will or disposition *mortis causa* being limited to

his own share of the moveable estate termed the dead's part; *Ersk.* 3. 9. 18; *Bell's Prin.* §§ 1585, 1591.

3. Upon dissolution of the marriage by death, separate rights arise as to these Goods in Communion; and the rules of law regulating the division of them may be summarised as follows:—

I. On death of Husband survived by Wife and Children:—

One-third falls to the wife as *jus relictae; Bell's Lect.* p. 796; *Bell's Prin.* § 1579.

One-third falls to the children who shall happen to survive him, and are not forisfamiliated, as their legitim—issue of predeceasing children take no share of the legitim; *Bell's Lect.* p. 797; *Bell's Prin.* § 1579.

The remaining third, as well as any moveable estate of the father not falling under the communion of goods, falls to his children in equal shares as his next of kin—the issue collectively of each child predeceasing its father, if any, taking an equal share with each of the living children; *Bell's Lect.* p. 797; *Bell's Prin.* § 1579.

Vide Remarks 6, 1, 2, 4, 5, 7, 56, in Table.

II. On death of Husband survived by Wife without Children:—

One-half falls to the wife as *jus relictae; Bell's Prin.* § 1579.

The other half, with any moveable estate of the husband not included in the communion of goods, will (subject to the contingent exceptions mentioned in Remarks 12, 13, and 37 in Table), fall to his next of kin in same degree of consanguinity, in equal shares, with representation among descendants and collaterals in competition with those who are nearer in degree; *Bell's Lect.* p. 797; *Bell's Prin.* § 1579.

Vide Remarks 6, 9, 51, 48, 46, in Table.

III. On death of Husband predeceased by Wife leaving Children:—

One-half falls to the surviving children as their legitim; *Bell's Lect.* p. 797.

The other half, including any moveable estate of the husband not comprised under the communion of goods, falls to the children as next of kin,—the issue collectively of each child predeceasing its father, if any, taking an equal share with each of the living children; *Bell's Lect.* p. 797.

Vide Remarks 1, 2, 4, 7, 56, in Table.

IV. On death of Husband predeceased by Wife without Children; or a Person dying Unmarried:—

The whole moveable succession is dead's part; and (subject to the contingent exceptions mentioned in Remarks 12, 13, and 37, in Table) will fall to be divided amongst the next of kin in the same degree of consanguinity in equal shares, with representation among descendants and collaterals in competition with those who are nearer in degree; *Ersk.* 3. 9. 18, *et seq.; Bell's Prin.* § 1861.

Vide Remarks 9, 51, 48, 46, in Table.

V. On death of Wife survived by Husband and Children:—

The husband remains proprietor of the whole communion of goods during his life. Any moveable estate of the wife not falling under the communion of goods or her husband's *jus mariti* falls to her children, of whatever marriage, in equal shares,—the issue collectively of each child predeceasing its mother, if any, taking an equal share with each of the living children; *Bell's Lect.* p. 797.

Vide Remarks 62, 56, 58, 59, 61, 9, 2, in Table.

VI. On death of Wife survived by Husband without Children:—

The husband retains the whole communion of goods; *Bell's Lect.* p. 797; 18 *Vict., c.* 23, § 6. Any moveable property of the wife not falling under the communion of goods, or her husband's *jus mariti* will (subject to the contingent exceptions mentioned in Remarks 12, 13, and 37, in Table) fall to her own next of kin in the same degree, in equal shares, with representation among descendants and collaterals in com-

petition with those who are nearer in degree; *Bell's Lect.* p. 797.

Vide Remarks 62, 9, 51, 48, 46, in Table.

VII. On death of Wife predeceased by Husband leaving Children:—

There being no distinction of legitim, or dead's part, in the succession of a female, the whole of the wife's moveable property falls to be divided among her children, of whatever marriage, in equal shares,—the issue collectively of each child predeceasing its mother taking an equal share with each of the living children; *Bell's Prin.* §§ 1591, 1861.

Vide Remarks 21, 2, 9, 7, 56, in Table.

VIII. On death of Wife predeceased by Husband without Children; or a Person dying Unmarried:—

The whole succession (subject to the contingent exceptions mentioned in Remarks 12, 13, and 37, in Table) will fall to be divided amongst her next of kin, in the same degree of consanguinity in equal shares, with representation among descendants and collaterals, in competition with those who are nearer in degree; *Ersk.* 3. 9. 18, *et seq.*

Vide Remarks 9, 51, 48, 46, in Table.

Chapter IV.

ORDER OF SUCCESSION IN MOVEABLE ESTATE.

The following statement of the Order of Succession of the Next of Kin will show the operation of the rules of law within the ordinary limits. But it must be kept in view that, unless excluded by marriage contract, the widow has her *jus relictae*, and the living children their legitim, whether the husband and father dies testate or intestate; and also that, with the exception of the fixed proportion of one-third to the mother if the intestate leave no issue and no father, and a contingent share to the half blood uterine (18 *Vict., cap.* 23, §§ 4, 5), she and her relations are altogether excluded from succession in moveable estate; but children succeed

to and through their mother; *Bell's Prin.* § 1861; *Ersk.* 3. 8. 9, and 3. 9. 2. See also general rule of law under Remark 9 in Table, page 27.

The alphabetical letters within parentheses in the following statement denote different branches in the same line of succession, and the figures the degrees of kindred, in their order of succession :—

I.—(1) Children; (2) Grandchildren; (3) Great-Grandchildren; and so on until the lineal descendants of the Intestate be exhausted, with representation,—*i.e.*, the issue collectively of each Child predeceasing its parent taking an equal share with each of the living Children.

Whom failing—

II.—(*a*) The Father of the Intestate, if alive, takes *one-half;* and failing him the Mother, if alive, *one-third*, of the *free* succession (*vide* Remarks 12, 13, in Table), preferably to the intestate's collaterals, under sections 3 and 4 of the Moveable Succession Act of 1855.

(*b*) (1) Brothers and Sisters german; (2) Nephews and Nieces, children of brothers and sisters german; (3) Grandnephews and Nieces, grandchildren of brothers and sisters german; and so on until the collateral line flowing from Brothers and Sisters german be exhausted, with representation as aforesaid in the case of deceased successors.

(*c*) (1) Brothers and Sisters consanguinean, *i.e.*, of the same Father but not the same Mother with the Intestate; (2) Nephews and Nieces, children of brothers and sisters consanguinean; (3) Grandnephews and Nieces, grandchildren of brothers and sisters consanguinean; and so on until the collateral line flowing from Brothers and Sisters consanguinean be exhausted, with representation as aforesaid in the case of deceased successors.

Whom failing—

III.—The Father of the Intestate.

Whom failing—

IV.—(*a*) To the extent of *one-half* only of the *free* succession under the 5th section of the said Moveable Succession Act, the other

half descending to the intestate's next of kin of the full blood (*vide* Remark 37 in Table) :—(1) Brothers and Sisters uterine, *i.e.*, of the same mother but not the same father with the Intestate; (2) Nephews and Nieces, children of brothers and sisters uterine; (3) Grandnephews and Nieces, grandchildren of brothers and sisters uterine; and so on until the collateral line flowing from Brothers and Sisters uterine be exhausted; with representation as aforesaid in the case of deceased successors.

(*b*) (1) Uncles and Aunts german, brothers and sisters of the Father; (2) Children of Uncles and Aunts, or Cousins german; (3) Grandchildren of Uncles and Aunts german, and so on until the line flowing from the Father's collateral german relations be exhausted, but *without* representation of deceased successors.

(*c*) (1) Uncles and Aunts consanguinean, brothers and sisters of the Father; (2) Children of Uncles and Aunts, or Cousins consanguinean; (3) Grandchildren of Uncles and Aunts consanguinean, and so on until the line flowing from the Father's collateral consanguinean relations be exhausted, but without representation of deceased successors.

Whom failing—

V.—The Grandfather of the Intestate.

Whom failing—

VI.—(*a*) (1) Great Uncles and Aunts, brothers and sisters german of the Grandfather; (2) Children of Great Uncles and Aunts german; (3) Grandchildren of Great Uncles and Aunts german, and so on until the line flowing from the Grandfather's collateral german relations be exhausted, but without representation of deceased successors.

(*b*) (1) Great Uncles and Aunts, brothers and sisters consanguinean of the Grandfather; (2) Children of Great Uncles and Aunts consanguinean; (3) Grandchildren of Great Uncles and Aunts consanguinean, and so on until the line flowing from

the Grandfather's collateral consanguinean relations be exhausted, but without representation of deceased successors.

Whom failing—

VII.—The Great-Grandfather of the Intestate.

Whom failing—

VIII.—The Great-Grandfather's collateral relations succeed in the same order as stated above in No. VI.; and failing them, the Great-Great-Grandfather, and after him his collaterals in the same order, and so on upwards, as far as propinquity can be traced.

Failing Heirs connected by blood with the Intestate, the Crown takes the whole succession as *ultimus haeres.*

II.—INTESTATE SUCCESSION IN HERITAGE.

Chapter I.

GENERAL VIEW OF RULES OF LAW.

1. The term Heritage comprehends land and parts of land, as minerals, lime, coal, or stone in mines and quarries; buildings, fixtures in houses, mills, machines, or vessels, when immoveably fixed by their own weight; trees and natural fruits not requiring seed and cultivation; second crop of hay from seed sown, but not in question between landlord and tenant. All rights having a tract of future time, as liferents and annuities; also titles

of honour and offices to continue after the patentee or officer's life; feu-duties and casualties of superiority, rents of land, fishings, game, servitudes, teinds, patronage, reversions, &c.; *Bell's Prin.* §§ 1470–1505; *Ersk.* 2. 2. 5. The right to heirship moveables is now abolished, and heritable securities form moveable estate, except where conceived in favour of heirs excluding executors, but they continue heritable *quoad fiscum*, and in questions regarding the husband's *jus mariti*, the wife's *jus relictae*, and children's legitim; 31 *and* 32 *Vict.*, *cap.* 101, §§ 117, 160.

2. The heir must be legitimate at the time he succeeds to heritage; See Remark 56, page 37; *Bell's Prin.* §§ 1658, 1627.

3. In every case the heir's descent shall be traced from the person who died last vest and seised in or held an open disposition to the land, whether that person inherited or not, *i.e.*, whether he took as heir or acquired by purchase, donation, or otherwise, as singular successor; in the latter case the succession is called Conquest, in contradistinction to property which the heir takes from a father or other relation, called Heritage; *Bell's Prin.* §§ 1658, 1670.

4. A right of representation exists, *i.e.*, when a person predeceases the Intestate, who, had he survived, would have been heir, his sons and daughters represent him, and in their legal order take that share which, if alive, he would have taken, to the exclusion of heirs in the line in which their parent stood; *Bell's Prin.* § 1660; *Ersk.* 3. 8. 11.

5. In heritage, males and their issue succeed according to seniority. In general, heritage descends from eldest son to eldest son; and when the eldest son dies *without* leaving issue, the second son succeeds, and so on with the other sons; *Bell's Prin.* § 1665; *Ersk.* 3. 8. 6.

6. Failing males, the succession opens to females in the same degree, who take, not in order of seniority, but all together, and are called heirs-portioners. Any of the heirs-portioners may however insist on having the succession divided, which is accomplished by the Sheriff and a jury under a brieve of division; 1 *M'Laren*, 78; *Bell's Prin.* § 1659.

7. The issue of each daughter predeceasing the Intestate take their mother's place; first sons in their order, then daughters equally; *Bell's Prin.* § 1659.

8. Upon the death of a husband, the wife is entitled by law to a liferent of a third of the heritage, called her Terce, in which her husband

stood infeft, *i.e.*, to which the title had been completed and recorded in the Register of Sasines at his death, unless her right to such liferent has been discharged for a separate provision in an antenuptial marriage-contract or otherwise; and upon the death of the wife, the husband is entitled to a liferent, called his Courtesy, of the whole heritable estate in which the wife stood infeft in fee at her death, provided a child of the marriage shall have been heard to cry; that no heir of the wife by a former marriage exists; and that she shall have succeeded to the property as heir of line, tailzie, or provision. The heir takes the heritage subject to these liferents; *Bell's Prin.* §§ 1595–2606; 1 *M'Laren*, 82–91; *Ersk.* 2. 9. 53.

9. Terce is due from conquest as well as from heritage; *Ersk.* 2. 9. 45. It is also due irrespective of the manner in which the property is held, and of the period of subsistence of the marriage; 18 *Vict.*, *cap.* 23, § 7; and 24 *and* 25 *Vict.*, *cap.* 86, § 12. But it is not due from the following subjects, viz:—An heritable estate possessed on a personal title, including property derived from an ancestor, and possessed upon the title of apparency; leases, teinds (unless feudalised), the mansion-house, where only one exists; superiorities, either in relation to feu-duties or casualties; rights of reversion, patronage, coal and other minerals; and it is diminished by heritable securities on which infeftment has followed; 1 *M'Laren*, 83–86.

10. Terce vests absolutely by survivance, but a judicial act of the Sheriff, called "Kenning to the Terce," is necessary to enable the widow to assign or transmit to her executors the fruits of it. Without such service a tercer is entitled to receive the rents or fruits of the subjects, and her discharges to tenants will be valid to the extent of her interest, but she cannot in that transition state sue tenants for arrears of rent; *Bell's Prin.* §§ 1601–1603; 1 *M'Laren*, 87.

11. Courtesy also vests by survivance, but unlike the correlative right of terce, the surviving husband requires no title to enable him to continue his possession after the wife's death, or to assign or transmit to his executors the rents accruing during his lifetime. Courtesy is not due from conquest heritage, or estate which the wife acquired by singular title; *Ersk.* 2. 9. 52–54, unless she was *alioquin successuru*; *Primrose* v. *Crawford*, 1771, M. *voce* "Courtesy," App. No. 1; and the right is liable to be

diminished by the interest on heritable debts, and also by the interest (not the principal) of personal debts to the same extent as an absolute proprietor would be liable. The husband enjoys the usual rights and privileges of a liferenter; he can be made to find caution when there is reasonable apprehension of injury to the estate by waste or dilapidation actually commenced; 1 *M'Laren*, 90, 91.

12. Where a woman dies without issue, and intestate, the succession follows the same rule as that of succession to males, both as regards heritage and conquest; *Bell's Prin.* §§ 1663, 1671.

13. The mother of the intestate and her relatives never succeed in any contingency; even the mother's own estate, after vesting in her son or daughter, never ascends to the maternal line again; *Bell's Prin.* § 1669; *Ersk.* 3. 8. 9.

14. In collateral succession, *i.e.*, the succession of the brothers and sisters of the intestate, or the brothers and sisters of some ancestor in the paternal line, the rule in heritage is, that after descending as far as possible, the succession gradually ascends. So among collateral relatives of the same degree, the immediate younger brother of the intestate (or of his ancestor as the case may be) succeeds first with his issue male and female in order stated in Nos. 5 and 6; afterwards the younger brothers in their order; then the immediate elder brother; after him the other elder Brothers in inverse order, with their respective issue in their order; and lastly, the sisters as heirs-portioners in their order; 1 *M'Laren*, 68; *Bell's Prin.* § 1662.

15. The order of succession in conquest deviates from the above order in heritage in the branches collateral to the intestate, and to the intestate's father, after which divergence the order seems to be the same as in heritage. The rule in conquest is, that failing children and their issue, the immediate elder brother succeeds; and failing him and his issue, the next immediate elder, and so to the eldest, each transmitting to his issue, male and female, in their order as he succeeds. If there be only younger brothers, the immediate younger succeeds though he should also take the heritage to which the intestate had himself succeeded. Failing brothers and their issue, sisters, whether elder or younger than the deceased, succeed equally as in No. 6; failing sisters and their issue, the father succeeds, and failing him, uncles in the same order as brothers; failing uncles and

their issue, aunts succeed equally as in No. 6. It will thus be observed that the distinction between heritage and conquest arises only where a middle brother or sister or their issue dies intestate without issue surviving. When the heir of conquest dies after his titles are made up, then the succession goes in the usual way. Conquest includes only subjects to which a title has been completed by infeftment or requiring infeftment to complete it. Thus it does not apply to leases or personal bonds excluding executors; *Bell's Prin.* §§ 1670–1676; *Ersk.* 3. 8. 16; 1 *M'Laren*, 69.

16. Brothers and sisters consanguinean, *i.e.*, by the same father but not the same mother, succeed in conquest as in heritage after the full blood, in the same order as the full blood. In heritage, if they are issue of a former marriage, the youngest brother succeeds first, and gradually upwards; if of a subsequent marriage, the eldest succeeds first, and gradually downwards; *Bell's Prin.* § 1665.

17. Brothers and sisters uterine, *i.e.*, of the same mother but not the same father, never succeed in any event; *Bell's Prin.* § 1665.

18. The order of succession to heritage is not affected by the tenure or manner in which the property is held. For instance, heritable property is split up into two or more parallel estates of inheritance, belonging to different persons, who stand to each other in the relation of superior and vassal, or feu-holder;* but these splits do not affect the order of succession, with the only exception, if it can be so considered, that newly acquired property, if feudalised, goes to the heir of conquest according to the rule in No. 15, but if not feudalised, to the heir of line, as in No. 14; 1 *M'Laren*, 65; *Bell's Prin.* § 676 *et seq.*

19. The person to whom a succession has actually opened, but who has not completed his title to his ancestor's estate, is, in legal phraseology, called an apparent heir. Before the succession has opened he is called heir presumptive. He is also called heir-at-law, because he succeeds by the operation of law; heir of line, because he succeeds in a certain recognised line of propinquity; heir general, because he may enter by a general service as nearest and lawful heir to the deceased whom he represents

* While these pages are in the press a Bill has been introduced into the House of Commons by which it is proposed to abolish the estates of superiority, by creating the rights which superiors now enjoy in the land held by their vassals real burdens on the vassal's estate, and thus establish a simpler system of titles to land.

generally; heir whomsoever or whatsoever, in contradistinction to special heir called by particular destination; *Bell's Prin.* § 1677; *Ersk.* 3. 8. 47.

20. When a person possessed of heritage dies intestate, the estate lies in abeyance as it were, or, in legal phraseology, *in haereditate jacente* of the ancestor, until the apparent heir makes up a title for transmitting the estate from the ancestor to himself, or, as it is called, vesting the succession. The heir is entitled, *before* completing such title, to continue his ancestor's possession, and to pursue for, receive, and discharge, the rents due from the estate, but he can in that transition state remove only tenants deriving right from himself, not those holding leases from the ancestor; 1 *M'Laren*, 96. Assuming possession without a title, however, renders the heir liable for the ancestor's debts to the extent of his whole estate, heritable and moveable, unless the intromission is inconsiderable or had in circumstances inferring the absence of fraud. The liability is incurred to creditors of the ancestor, and not to persons interested only in the succession; *Bell's Prin.* §§ 1914–1926; *Ersk.* 3. 8. 50–86.

21. The heir is allowed by law six months, computed from the ancestor's death, or from his own birth, if posthumous, to deliberate whether he will enter and represent the ancestor under a general title, and thus become responsible for all his debts, or serve under a special title with limited responsibility, or altogether refuse the succession, which he is entitled to do, if he should think it would be unprofitable after paying the ancestor's debts; and with this view he is entitled to see the title-deeds and debts and liabilities affecting the estate of the ancestor, or the person of his representative, and also to challenge any deeds executed on deathbed. But this privilege is terminated not only by the lapse of the six months, but by the heir making up a title to the ancestor during that period, in which case he incurs the passive liability appropriate to his title of possession; or by his passively taking possession and uplifting the rents; or by certain other acts of intromission held in law sufficient to render him responsible for the debts of the ancestor; *Ersk.* 3. 8. 50–94; *Bell's Prin.* §§ 1685, 1914–1926; 31 *and* 32 *Vict.*, *cap.* 101, § 61.

22. With the exception of the udal lands of Orkney and Shetland, and allodial property, unregistered leases, *jus crediti* under a marriage settlement, moveables made heritable by destination, and honours and dignities

(*Ersk.* 3. 8. 77; *Bell's Prin.* § 1824), a written title is necessary in every case to transmit heritable property from the ancestor to the heir; but as the forms necessary in the completion of such titles vary according to the state and nature of the predecessor's title, any particular consideration of these is beyond the scope of these notes. It may be noticed generally, that when a person dies infeft in heritage, and the heir is known to the superior, the superior, on production to him of the last charter, grants what is called a writ of *clare constat*, the recording of which, with warrant of registration thereon in the appropriate Register of Sasines, completes the heir's title to the specific estate, and only implies passive representation to the extent of the value of the estate; or the heir may proceed to vest in himself the estate in which the ancestor died infeft under a similar limited representation, by way of special service, the extracted decree of which is held equivalent to a disposition by the ancestor last vest and seized in the lands in favour of the heir so served; and its registration in the appropriate Register of Sasines as a conveyance, along with a warrant of registration thereon on his behalf, will complete the feudal title in the person of the heir so served. When the deceased died uninfeft, and the heir wishes to establish the general title of heir without application to any particular subject, the succession is vested in him by way of general service, the extracted decree of which completes his title to the heritable rights not requiring infeftment; but with respect to the feudal estate, a notarial instrument requires to be expede upon the decree, and recorded in the Register of Sasines. But if the heir be doubtful whether the general succession opening to him will be profitable or not, he may limit his responsibility in the general service to the inheritance, by annexing to the service a specification of the subjects he takes as heir. When a creditor dies in right of an heritable security, constituted by infeftment from which executors are excluded, the title of the heir may be completed by a writ of acknowledgment in his favour from the debtor, and recording it in the appropriate Register of Sasines; or by obtaining a general or special service in the proper character, and expeding and recording a notarial instrument on the decree or extract. And when a creditor in an heritable security similarly constituted, from which executors are not excluded, dies intestate, his executors, duly confirmed, may complete a title to such security by expeding and recording a notarial instrument in the appropriate Register; 31 *and* 32 *Vict.*, *cap.* 101, § 46–49, and 125–128.

Chapter II.

ORDER OF SUCCESSION IN HERITAGE.

The lines of succession in heritage follow the same order as in moveable succession,—first Descendants, next Collaterals, and then Ascendants with their collaterals; *Bell's Prin.* § 1647. The operation of the rules of succession in these lines is as follows:—

I. Descendants:—

1. The intestate's Eldest Son, to the exclusion of all the other sons; *Bell's Prin.* § 1658.
   (*a*) His eldest son and issue, sons in order of seniority with their respective issue, and then daughters equally, as heirs-portioners, with their respective issue; first males in their order, then females equally.
   (*b*) His second son and issue, sons in order of seniority and daughters equally, as above; and so on till sons are exhausted.
   (*c*) His daughters equally.
2. The intestate's Second Son, to the exclusion of the other sons.
   (*a*) His eldest son and issue, as above.
   (*b*) His second son and issue, as above, and so on till exhaustion of sons.
   (*c*) His daughters equally.
3. The intestate's Third Son, with his issue as above; and so on in succession to the other sons in the order of seniority, with issue as above.
4. The intestate's Daughters, of whatever marriage, inherit *pro indiviso* as heirs-portioners,—the issue of each daughter who has died taking their mother's place; first, sons in their order to the exclusion of the rest, then daughters equally, as heirs-portioners.

II. Collaterals:—

Failing descendants, the Brothers and Sisters of the intestate succeed thus (*Bell's Prin.* §§ 1661–1665; *Ersk.* 3. 8. 8):—

5. The brothers succeed each by himself with his issue; males in the order of seniority, and females equally as above. If younger than the intestate the brothers take in the order of seniority; if elder, then in inverse order.
6. The sisters as heirs-portioners,—the issue of each deceased sister succeeding as stated in No. 4.
7. The brothers consanguinean, each by himself with his issue, in the order stated in No. 5.
8. The sisters consanguinean equally,—the issue of each deceased sister succeeding as stated in No. 4.

III. Ascendants:—

Upon the failure of their own descendants, the paternal ancestors succeed thus (*Bell's Prin.* §§ 1666, 1667; *Ersk.* 3. 8. 8):—

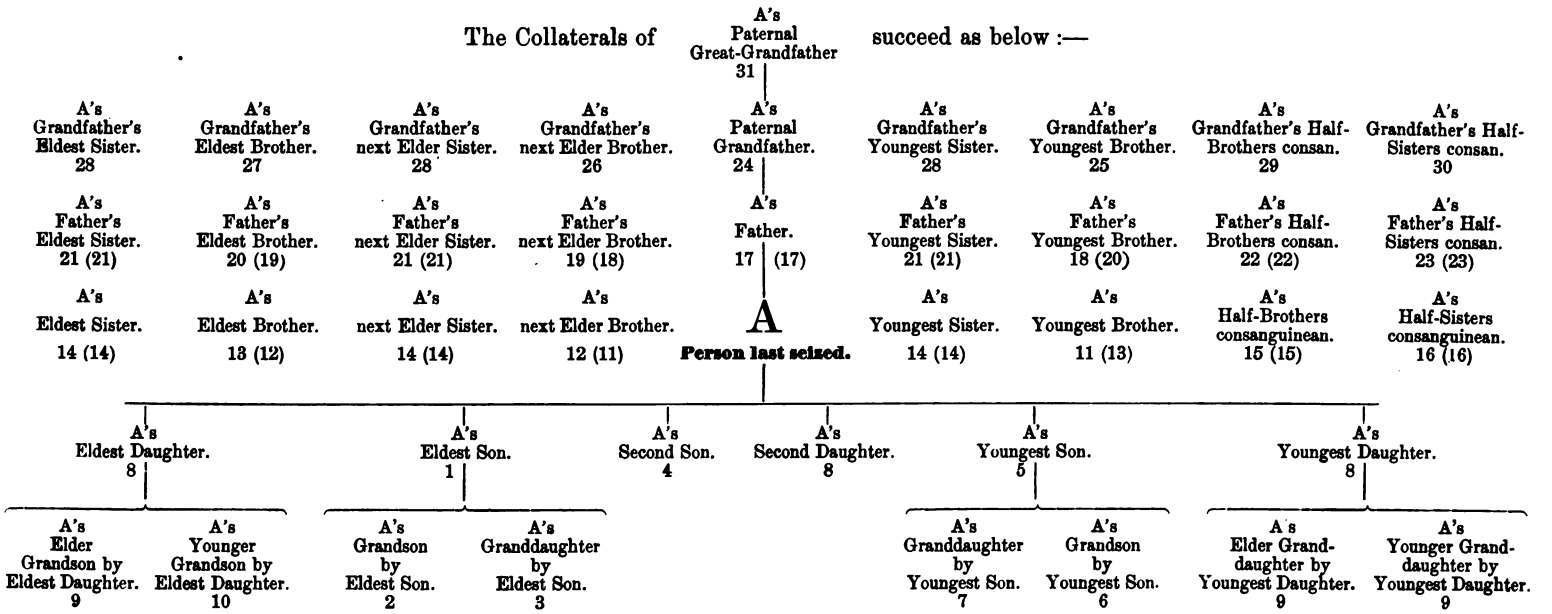
9. The intestate's father.
10. The intestate's uncles, each by himself with his issue, in the order stated in No. 5.
11. The intestate's aunts equally,—the issue of each deceased aunt succeeding as stated in No. 4.
12. The intestate's uncles consanguinean, each by himself with his issue in the order stated in No. 5.
13. The intestate's aunts consanguinean equally,—the issue of each deceased aunt succeeding as stated in No. 4.
14. The intestate's paternal grandfather.
15. The brothers of the intestate's paternal grandfather, each by himself with his issue, in the order stated in No. 5.
16. The sisters of the intestate's paternal grandfather equally,—the issue of each deceased sister succeeding as stated in No. 4.
17. The brothers consanguinean of the intestate's paternal grandfather, each by himself with his issue, in the order stated in No. 5.
18. The sisters consanguinean of the intestate's paternal grandfather equally,—the issue of each deceased sister succeeding as stated in No. 4.
19. The intestate's paternal great grandfather; and then his collaterals as above; and so on as far as propinquity can be

traced; and failing of any proof of propinquity, the Crown succeeds as *ultimus haeres; Bell's Prin.* § 1669; *Ersk.* 3. 8. 9.

It will be kept in view, as stated above, that the order of succession in Conquest deviates from the above order in Heritage, in the branches collateral to the intestate and to the intestate's father. In succession in conquest, failing issue of the intestate, his immediate elder brother succeeds, and failing him and his descendants, the next elder brother, and so to the eldest with their respective issue. If there be only younger brothers, the immediate younger succeeds; and so downwards, with their respective issue, and the sisters after them as heirs-portioners.

The annexed Table gives a concentrated view of the operation of the above Rules in relation to both species of property. Descent is traced from A, and the relatives succeed in the order of the numbers placed under their names, each as he succeeds transmitting to his issue, male and female, in order above stated. The numbers within parentheses denote the order of succession in conquest as distinguished from the order in heritage:—

TABLE OF DESCENT OR SUCCESSION TO HERITAGE AND CONQUEST.



Note.—With regard to No. 9, on the death of A's second Daughter, one-half of her estate goes to her eldest Sister's elder Son, the other half to her youngest Sister's two Daughters as Heirs'-portioners.—See Rule 7, p. 50. In every case descendants take by representation, in the order shown on page 56.

APPENDIX.

I. INTESTATE MOVEABLE SUCCESSION ACT OF 1855

18 VICT., CAP. 23.

An Act to alter in certain respects the Law of Intestate Moveable Succession in Scotland.—[25th May 1855.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

I. [*The Issue of a predeceasing Next of Kin shall come in the Place of their Parent in the Succession to an Intestate.*]—In all cases of Intestate Moveable Succession in *Scotland* accruing after the passing of this Act, where any person who, had he survived the intestate, would have been among his next of kin, shall have predeceased such intestate, the lawful child or children of such person so predeceasing shall come in the place of such person, and the issue of any such child or children, or of any descendant of such child or children who may in like manner have predeceased the intestate shall come in the place of his or their parent predeceasing, and shall respectively have right to the share of the moveable estate of the intestate to which the parent of such child or children or of such issue, if he had survived the intestate, would have been entitled: Provided always, that no representation shall be admitted among collaterals after brothers' and sisters' descendants, and that the surviving next of kin of the intestate claiming the office of executor shall have exclusive right thereto, in preference to the children or other descendants of any predeceasing next of kin, but that such children or descendants shall be entitled to confirmation when no next of kin shall compete for said office.

II. [*Issue of predeceasing Heir succeeding to the Intestate's Heritage may collate, but other Issue not excluded by his not collating from claiming out of Moveable Estate. Difference between Value of Heritage and Share their Parent would have taken on Collation.*]—Where the person predeceasing would have been the heir in heritage of an intestate leaving heritable as well as move-

able estate had he survived such intestate, his child, being the heir in heritage of such intestate, shall be entitled to collate the heritage to the effect of claiming for himself alone, if there be no other issue of the predeceaser; or for himself and the other issue of the predeceaser, if there be such other issue, the share of the moveable estate of the intestate which might have been claimed by the predeceaser upon collation if he had survived the intestate; and daughters of the predeceaser, being heirs-portioners of the intestate, shall be entitled to collate to the like effect; and where, in the case aforesaid, the heir shall not collate, his brothers and sisters, and their descendants in their place, shall have right to a share of the moveable estate equal in amount to the excess in value over the value of the heritage of such share of the whole estate, heritable and moveable, as their predeceasing parent had he survived the intestate would have taken on collation.

III. [*Father to succeed to Extent of One-Half when no Issue.*]—Where any person dying intestate shall predecease his father without leaving issue, his father shall have right to one-half of his moveable estate, in preference to any brothers or sisters or their descendants who may have survived such intestate.

IV. [*Where Father has predeceased, Mother to succeed to Extent of One-Third.*]—Where an intestate dying without leaving issue, whose father has predeceased him shall be survived by his mother, she shall have right to one-third of his moveable estate, in preference to his brothers and sisters or their descendants, or other next of kin of such intestate.

V. [*Succession by Brothers and Sisters uterine.*]—Where an intestate dying without leaving issue, whose father and mother have both predeceased him, shall not leave any brother or sister german or consanguinean, nor any descendant of a brother or sister german or consanguinean, but shall leave brothers and sisters uterine, or a brother or sister uterine, or any descendant of a brother or sister uterine, such brothers and sisters uterine and such descendants in place of their predeceasing parent shall have right to one-half of his moveable estate.

VI. [*On a Wife predeceasing her Husband, her Representatives to have no Claim on the Goods in Communion.*]—Where a wife shall predecease her husband, the next of kin, executors, or other representatives of such wife, whether testate or intestate, shall have no right to any share of the goods in communion, nor shall any legacy or bequest or testamentary disposition thereof by such wife affect or attach to the said goods or any portion thereof.

VII. [*Not to affect Rights of Spouses on Dissolution of Marriage in certain Cases.*]—Where a marriage shall be dissolved before the lapse of a year and day from its date, by the death of one of the spouses, the whole rights of the survivor and of the representatives of the predeceaser shall be the same as if the marriage had subsisted for the period aforesaid.

VIII. [*Part of Act of Parliament of Scotland*, 1617, *c.* 14, *repealed.*]—So much of an Act of the Parliament of *Scotland* passed in the year One

thousand six hundred and seventeen, and intituled *Anent Executors*, as allows executors-nominate to retain to their own use a third of the dead's part in accounting for the moveable estate of the deceased, is hereby repealed, and executors-nominate shall, as such, have no right to any part of the said estate.

IX. [*Interpretation of Terms.*]—The words "Intestate Succession" shall mean and include succession in cases of partial as well as of total intestacy; "Intestate" shall mean and include every person deceased who has left undisposed of by will the whole or any portion of the moveable estate on which he might, if not subject to incapacity, have tested; "Moveable Estate" shall mean and include the whole free moveable estate on which the deceased, if not subject to incapacity, might have tested, undisposed of by will, and any portion thereof so undisposed of.

II. CONFIRMATION OF EXECUTORS ACT OF 1823.

4 GEO. IV., CAP. 98.

An Act for the better granting of Confirmations in Scotland.—[19th July 1823.]

WHEREAS it is expedient that provision should be made for the better granting of confirmations, in certain cases, in *Scotland;* be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same :—

I. [*Right to Confirmation to transmit to representatives.*]—That from and after the passing of this Act, in all cases of intestate succession, where any person or persons who, at the period of the death of the intestate, being next of kin, shall die before confirmation be expede, the right of such next of kin shall transmit to his or her representatives, so that confirmation may and shall be granted to such representatives, in the same manner as confirmations might have been granted to such next of kin immediately upon the death of such intestate.

II. [*Court to regulate Caution to be found.*]—And be it further enacted, that from and after the first day of January One thousand eight hundred and twenty-four, caution shall not be required to be found by executors-nominate; and in all other cases the Court granting confirmation shall fix the amount of the sum for which caution shall be found by the person or persons to whom confirmation shall be granted, not exceeding the amount confirmed.

III. [*Partial Confirmations to cease.*]—And be it further enacted, that from and after the first day of January One thousand eight hundred and

twenty-four, every person requiring confirmation shall confirm the whole moveable estate of a deceased person known at the time, to which such person shall make oath: Provided always, that it shall and may be lawful to eik to such confirmation any part of such estate that may afterwards be discovered, provided the whole of such estate so discovered, shall be added, upon oath as aforesaid: Provided nevertheless, that nothing herein contained shall affect or alter the provision made with respect to special assignations by an Act of the Scottish Parliament, made in the year One thousand six hundred and ninety, intituled *Act anent the Confirmation of Testaments.*

IV. [*In cases of Executor's Creditor, confirmation to be granted.*]—Provided further, and be it enacted, that in the case of confirmation by executor's creditor, such confirmation may be limited to the amount of the debt and sum confirmed to which such creditor shall make oath: Provided always, that notice of every application for confirmation by any executor's creditor shall be inserted in the Edinburgh Gazette, at least once, immediately after such application shall be made; in evidence whereof, a copy of the Gazette in which such notice shall have been inserted shall be produced in Court before any such confirmation shall be further proceeded in.

III. CONFIRMATION OF EXECUTORS ACT OF 1858,

21 AND 22 VICT., CAP. 56.

An Act to amend the Law relating to the Confirmation of Executors in Scotland, *and to extend over all Parts of the United Kingdom the Effect of such Confirmation, and of Grants of Probate and Administration.*—[23d July 1858.]

WHEREAS it is expedient to amend the law relating to the confirmation of executors in *Scotland*, and to extend over the United Kingdom the effect of such confirmation, and of grants of probate and administration: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. [*Practice of raising Edicts of Executry to cease.*]—From and after the twelfth day of *November* One thousand eight hundred and fifty-eight, the practice of raising edicts of executry before the Commissary Courts in *Scotland*, for the decerniture of executors to deceased persons, shall cease, and it shall not be competent to any person to obtain himself decerned executor in virtue of any such edict raised subsequently to the date aforesaid.

II. [*Petition to Commissary to be substituted. Form of Petition as in Schedule* (*A*).]—From and after the date aforesaid every person desirous of

being decerned executor of a deceased person as disponee, next of kin, creditor, or in any other character whatsoever now competent, or of having some other person, possessed of such character, decerned executor to a deceased person, shall, instead of applying, as heretofore, for an edict of executry from the commissary, present a petition to the commissary for the appointment of an executor, which petition shall be in the form as nearly as may be of the schedule (A) hereunto annexed, and shall be subscribed by the petitioner or by his agent.

III. [*To whom Petition to be presented.*]—Such petition shall be presented to the commissary of the county wherein the deceased died domiciled, and in the case of persons dying domiciled furth of *Scotland*, or without any fixed or known domicile, having personal or moveable property in *Scotland*, to the commissary of *Edinburgh*.

IV. [*Mode of intimating Petition.*]—Every such petition, in place of being published at the kirk-door and market cross, as edicts of executry have been in use to be published, shall be intimated by the commissary-clerk affixing on the door of the Commissary Court House, or in some conspicuous place of the Court and of the office of the commissary clerk, in such manner as the commissary may direct, a full copy of the petition, and by the keeper of the Record of Edictal Citations at *Edinburgh* inserting in a book, to be kept by him for that purpose, the names and designations of the petitioner and of the deceased person, the place and date of his death, and the character in which the petitioner seeks to be decerned executor, which particulars the keeper of the Record of Edictal Citations shall cause to be printed and published weekly, along with the Abstracts of the Petitions for General and Special Services, in the form of schedule (B) hereunto annexed: Provided always, that to enable the keeper of the Record of Edictal Citations to make such publication, the commissary clerk shall transmit to him the said particulars, and to enable the commissary clerk to grant the certificate after mentioned, the keeper of the Record of Edictal Citations shall transmit to the commissary clerk a copy, certified by the said keeper, of the printed and published particulars, all in such form and manner and on payment of such fees as the Court of Session by Act of Sederunt may direct.

V. [*Certificate of Intimation of Petition. Additional Intimation of Petition in certain cases.*]—The commissary clerk, after receiving the certified copy of the printed and published particulars, shall forthwith certify on the petition that the same has been intimated and published, in terms of the provisions of this Act, in the form of schedule (C) hereunto annexed, and such certificate shall be sufficient evidence of the facts therein set forth: Provided always, that where a second petition for confirmation is presented in reference to the same personal estate, the commissary shall direct intimation of such petition to be made to the party who presented the first petition.

VI. [*Procedure on Petition. Decree Dative. Proviso as to Caution.*]—On the expiration of nine days after the commissary clerk shall have certified the intimation and publication of a petition for the appointment of an executor as aforesaid, the same may be called in Court, and an executor decerned, or other procedure may take place according to the forms now in

use in case of edicts of executry, and with the like force and effect; and decree dative may be extracted on the expiration of three lawful days after it has been pronounced, but not sooner: Provided always, that nothing herein contained shall alter or affect the law as to executors finding caution; and that bonds of caution for executors may be partly printed and partly written.

VII. [*Not to affect present Procedure.*]—Provided always, that nothing herein-before contained shall alter or affect the course of procedure now in use before the commissaries in confirmations of executors-nominate.

VIII. [*Where Inventories, &c., may be recorded. Confirmations may be granted.*]—Inventories of personal estates of deceased persons and relative testamentary writings may be given up and recorded in, and confirmations may be granted and issued by, any Commissary Court to which it is competent to apply in virtue of the provisions of this Act for the appointment of an executor-dative to the deceased.

IX. [*Inventory may include Personal Estate in any part of United Kingdom.*]—From and after the date aforesaid it shall be competent to include in the inventory of the personal estate and effects of any person who shall have died domiciled in *Scotland* any personal estate or effects of the deceased situated in *England* or in *Ireland*, or both: Provided that the person applying for confirmation shall satisfy the commissary, and that the commissary shall by his interlocutor find that the deceased died domiciled in *Scotland*, which interlocutor shall be conclusive evidence of the fact of domicile: Provided also, that the value of such personal estate and effects situated in *England* or *Ireland* respectively shall be separately stated in such inventory, and such inventory shall be impressed with a stamp corresponding to the entire value of the estate and effects included therein, wheresoever situated within the United Kingdom.

X. [*Form and Effect of Confirmations.*]—Confirmations shall be in the form, or as nearly as may be in the form, of schedules (D) and (E) hereunto annexed; and such confirmations shall have the same force and effect with the like writs framed in terms of the Acts of Sederunt passed on the twentieth *December* One thousand eight hundred and twenty-three and the twenty-fifth *February* One thousand eight hundred and twenty-four, or at present in use.

XI. [*Oaths, before whom to be taken.*]—Oaths and affirmations on inventories of personal estates given up to be recorded in any Commissary Court may be taken either before the Commissary or his depute, or the commissary-clerk or his depute, or before any commissioner appointed by the Commissary or before any Magistrate or Justice of the Peace within the United Kingdom or the Colonies, or any *British* Consul.

XII. [*Confirmation produced in Probate Court of England, and sealed, to have the Effect of Probate or Administration.*]—From and after the date aforesaid when any confirmation of the executor of a person who shall in manner aforesaid be found to have died domiciled in *Scotland*, which

includes, besides the personal estate situated in *Scotland*, also personal estate situated in *England*, shall be produced in the Principal Court of Probate in *England*, and a copy thereof deposited with the Registrar, together with a certified copy of the interlocutor of the commissary finding that such deceased person died domiciled in *Scotland*, such confirmation shall be sealed with the seal of the said Court, and returned to the person producing the same, and shall thereafter have the like force and effect in *England* as if a probate or letters of administration, as the case may be, had been granted by the said Court of Probate.

XIII. [*Confirmation produced in Probate Court of Dublin, and sealed, to have the Effect of Probate or Administration.*]—From and after the date aforesaid, where any confirmation of the executor of a person who shall so be found to have died domiciled in *Scotland*, which includes, besides the personal estate situated in *Scotland* also personal estate situated in *Ireland*, shall be produced in the Court of Probate in *Dublin*, and a copy thereof deposited with the Registrar, together with a certified copy of the interlocutor of the Commissary finding that such deceased person died domiciled in *Scotland*, such confirmation shall be sealed with the seal of the said Court, and returned to the person producing the same, and shall thereafter have the like force and effect in *Ireland* as if a probate or letters of administration, as the case may be, had been granted by the said Court of Probate in *Dublin*.

XIV. [*Probate or Letters of Administration produced in Commissary Court and certified, to have Effect of Confirmation.*]—From and after the date aforesaid, when any probate or letters of administration to be granted by the Court of Probate in *England* to the executor or administrator of a person who shall be therein, or by any note or memorandum written thereon signed by the proper officer, stated to have died domiciled in *England*, or by the Court of Probate in *Ireland* to the executor or administrator of a person who shall in like manner be stated to have died domiciled in *Ireland*, shall be produced in the Commissary Court of the county of *Edinburgh*, and a copy thereof deposited with the commissary-clerk of the said Court; the commissary-clerk shall indorse or write on the back or face of such grant a certificate in the form as near as may be of the schedule (F) hereunto annexed; and such probate or letters of administration, being duly stamped, shall be of the like force and effect and have the same operation in *Scotland* as if a confirmation had been granted by the said Court.

XV. [*For securing the Stamp Duties, Probates, &c., to be deemed granted for all the Property in the United Kingdom. Inventory to include all such Property.*]—In any of the aforesaid cases where the deceased person shall be stated in or upon the probate or letters of administration to have been domiciled in *England* or in *Ireland*, as the case may be, such probate or letters of administration shall, for the purpose of securing the payment of the full and proper stamp duties, be deemed and considered to be granted for and in respect of the whole of the personal and moveable estate and effects of the deceased in the United Kingdom, within the meaning of the Act of Parliament passed in the fifty-fifth year of the reign of King *George* the Third, chapter one hundred and eighty-four, and of all other Acts of Parliament granting or relating to stamp duties on probates and letters of

administration in *England* and *Ireland* respectively; and the affidavit required by law to be made on applying for probate or letters of administration in *England* or *Ireland* as to the value of the estate and effects of the deceased; and also where the commissary shall in manner aforesaid find that the deceased was domiciled in *Scotland*, the inventory required by law to be exhibited and recorded in the proper Commissary Court in *Scotland* before obtaining confirmation, or intermitting with or entering upon the possession or management of the personal or moveable estate or effects of the deceased in *Scotland*, shall respectively extend to and include the whole of the personal and moveable estate of the deceased person in the United Kingdom, and the value thereof; and the stamp duties for the time being chargeable on probates and letters of administration and on inventories respectively shall be chargeable upon any probate or letters of administration to be granted, and any inventory to be exhibited and recorded as aforesaid respectively, for and in respect of the whole of the personal and moveable estate and effects of the deceased in the United Kingdom and the value thereof; and the said affidavit shall also separately specify the value of the said estate and effects in *Scotland*.

XVI. [*Provisions of former Acts to apply to the Probates, Letters of Administration, and Inventories mentioned in this Act.*]—For the purpose aforesaid, and also for granting relief where too high a stamp duty shall have been paid on any such probate or letters of administration, or inventory, the provisions contained in sections forty, forty-one, forty-two, and forty-three, of the said Act passed in the fifty-fifth year of His Majesty King *George* the Third, relating to probates and letters of administration granted in *England*, and the like provisions in the Act passed in the fifty-sixth year of the said King, chapter fifty-six, relating to probates and letters of administration granted in *Ireland*, and the provisions contained in the Act passed in the forty-eighth year of the said King, chapter one hundred and forty-nine, relating to inventories in *Scotland*, and also all other provisions contained in the said Acts respectively, or in any other Act or Acts relating to probates and letters of administration and inventories respectively, shall apply to the probates and letters of administration to which effect is given by this Act, and to the whole of the personal and moveable estate of the deceased for or in respect of which the same shall, in pursuance of this Act, be deemed to be granted, wheresoever situate in the United Kingdom; and also to the inventories in which the whole of the personal and moveable estate of the deceased, wheresoever situate in the United Kingdom, ought, in pursuance of this Act, to be included, in as full and ample a manner as if all such provisions were herein enacted in reference to such probates, letters of administration, and inventories respectively.

XVII. [*Affidavit as to Domicile to be made on applying for Probate or Administration.*]—Provided that in any case where, on applying for probate or letters of administration, it shall be required to be stated as aforesaid that the deceased was domiciled in *England* or in *Ireland*, the affidavit so as aforesaid required by law shall specify the fact according to the deponent's belief, which shall be sufficient to authorise the same to be so stated in or upon the probate or letters of administration; provided also,

that any such statement, and the interlocutor of the commissary finding that the deceased was domiciled in *Scotland*, shall be evidence, and have effect for the purposes of this Act only.

XVIII. [*Acts of Sederunt to be passed for following out purposes of this Act.*]—It shall be competent to the Court of Session, and they are hereby authorised and required, from time to time, to pass such Acts of Sederunt as shall be necessary and proper for regulating in all respects the proceedings under this Act before the commissary of *Edinburgh* and other commissaries in *Scotland*, and following out the purposes of this Act, and also the fees to be paid to agents before the said Courts, and to the commissary clerks and other officers of Court, and the expense of publication of petitions.

XIX. [*Former Acts of Sederunt repealed if inconsistent with this Act.*]—All former Acts, and Acts of Sederunt made in virtue thereof, so far as inconsistent with the present Act, are hereby repealed; and this Act may be amended or repealed by any Act to be passed during the present Session of Parliament, and may be cited as the "Confirmation and Probate Act, 1858."

XX. [*Interpretation of terms.*]—The word "Commissary" shall include Commissary Depute, and the term "Commissary Clerk" shall include Commissary Clerk Depute.

SCHEDULES to which the foregoing Act refers.

SCHEDULE (A).

Form of a Petition for Appointment of an Executor to a deceased Person.

Unto the Honourable the Commissary of [*specify the county*], the Petition of *A.B.* [*here name and design the petitioner*];

Humbly sheweth,

That the late *C.D.* [*here name and design the deceased person to whom an executor is sought to be appointed*] died at [*specify place*] on or about the [*specify date*], and had at the time of his death his ordinary or principal domicile in the county of [*specify county, or* "furth of Scotland," *or* "without any fixed domicile," *or* "without any known domicile," *as the case may be*].

That the petitioner is the only son and next of kin [*or state what other relationship, character, or title the petitioner has, giving him right to apply for the appointment of executor*].

May it therefore please your Lordship to decern the petitioner executor dative quâ next of kin to the said *C.D.* [*or state the other character in which the petitioner claims to be appointed executor*].

According to Justice, &c.

[*Signed by the Petitioner or his Agents.*]

SCHEDULE (B).

Roll of Petitions for the Appointment of Executors in Commissary Courts in Scotland.

County.	Name and Designation of Petitioner.	Title of Petitioner.	Name and Designation of Defunct.	Place and Date of Death.
Edinburgh.	*A.B.*, Writer in Edinburgh.	Next of Kin.	*C.D.*, Merchant in Edinburgh.	No. George Street, Edinburgh, 1st January 1857.

SCHEDULE (C).

Form of Certificate by Commissary Clerk of Publication of a Petition for the Appointment of an Executor.

I, *A.B.*, commissary clerk [*or* "commissary clerk depute," *as the case may be*] of the County of [*specify county*], hereby certify that this petition was intimated by affixing a copy thereof on the door of the Court-house [*if some other place has been directed by the commissary, specify it*], on the [*specify date*], and by being published by the keeper of the Record of Edictal Citations at Edinburgh, in the printed roll of petitions for the appointment of executors in the Commissary Courts of Scotland, printed and published on [*specify date*].

A.B.

SCHEDULE (D).

Form of a Testament Dative or Confirmation of the Executor of a Person who has died without naming one.

I, *A.B.*, Commissary of the county of [*specify county*], considering that by my decree, dated [*specify date*], I decerned *C.D.* executor dative quâ next of kin [*or other character, as the case may be*] of the late *E.F.*, who died at [*specify place*], on [*specify date*], and seeing that the said *C.D.* has since given up on oath an inventory of the personal estate and effects of the said *E.F.* at the time of his death situated in Scotland [*or* situated in Scotland and England, *or* in Scotland and Ireland, *or* in Scotland, England, and Ireland, *as the case may be*], amounting in value to pounds, which inventory has been recorded in my Court Books, of date [*specify date*], and that he has likewise found caution for his acts and intromissions as executor: Therefore I, in Her Majesty's name and authority, make, constitute, ordain, and confirm the said *C.D.* executor dative quâ [*specify character*] to the defunct, with full power to him to uplift, receive, administer,

and dispose of the said personal estate and effects, and grant discharges thereof, if needful to pursue therefor, and generally every other thing concerning the same to do that to the office of executor dative quâ [*specify character*] is known to belong; providing always, that he shall render just count and reckoning for his intromissions therewith when and where the same shall be legally required.

Given under the Seal of Office of the Commissariot [*specify county*], and signed by the Clerk of Court at [*specify place*], the [*specify date*].

To be signed by the Commissary Clerk or his Depute, and sealed with the Seal of Office.

SCHEDULE (E).

Form of a Testament Testamentar or Confirmation of an Executor Nominate.

I, *A.B.*, Commissary of the county of [*specify county*], considering that the late *C.D.* died at [*specify place*], upon [*specify date*], and that by his last will [*or other writing containing the nomination of executor*], dated [*specify date*], and recorded in my Court Books upon [*specify date*], the said *C.D.* nominated and appointed *E.F.* to be his executor, and that the said *E.F.* has given up on oath an inventory of the personal estate and effects of the said *C.D.* at the time of his death situated in Scotland [*or* situated in Scotland and England, *or* situated in Scotland and Ireland, *or* situated in Scotland, England, and Ireland, *as the case may be*], amounting in value to pounds, which inventory has likewise been recorded in my Court Books of date [*specify date*]: therefore I, in Her Majesty's name and authority, ratify, approve, and confirm the nomination of executor contained in the foresaid last will [*or other writing containing the nomination of executor*]; and I give and commit to the said *E.F.* full power to uplift, receive, administer, and dispose of the said personal estate and effects, grant discharges thereof, if needful to pursue therefor, and generally every other thing concerning the same to do that to the office of an executor nominate is known to belong; providing always, that he shall render just count and reckoning for his intromissions therewith when and where the same shall be legally required.

Given under the Seal of Office of the Commissariot of [*specify county*], and signed by the Clerk of Court at [*specify place*], the [*specify date*].

To be signed by the Commissary Clerk or his Depute, and sealed with the seal of Office.

SCHEDULE (F).

I, *A.B.*, Commissary Clerk [*or* Commissary Clerk Depute] of the County of Edinburgh, hereby certify that this grant of probate has [*or* these letters of administration have] been produced in the Commissary Court of the said County, and that a copy thereof has been deposited with me.

IV. AMENDMENT TO CONFIRMATION AND PROBATE ACT, 1858.

22 VICT., CAP. 30.

An Act to amend the "Confirmation and Probate Act, 1858."
[19*th* April 1859.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

I. [*Persons, &c., making Payments upon Confirmations and Probates under Act* 1858 *to be indemnified.*]—All persons and corporations who, in reliance upon any instrument purporting to be a confirmation granted under the "Confirmation and Probate Act 1858," and all persons and corporations who, in reliance upon any such instrument which may be sealed under the authority of the said Act with the seal of the Principal Court of Probate in *England* or of the Court of Probate in *Dublin*, and all persons or corporations who, in reliance upon any instrument purporting to be a probate or letters of administration granted by the Court of Probate in *England* or Court of Probate in *Dublin*, and having indorsed or written thereon a certificate by the commissary-clerk of *Edinburgh*, in the form in the said Confirmation and Probate Act prescribed, shall have made or permitted to be made, or shall make or permit to be made, any payment or transfer *bona fide* upon any such confirmation, probate, or letters of administration, shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of such confirmation, probate, or letters of administration.

II. [*Short Title.*]—This Act may be cited as the "Confirmation and Probate Amendment Act 1859."

V.—ABSTRACT OF THE RATES OF INVENTORY DUTY.

ESTATES	DUTIES.	
	Testate.	Intestate.
Of Persons dying on or before 25th July 1864:—		
Above £20 and under £50	10*s.*	10*s.*
Of the value of £50 and under £100	10*s.*	£1
Persons dying as above, and persons dying after 25th July 1864:—		
Above £100 and under £200	£2	3
Of the value of £200 and under £300	5	8
300 ... 450	8	11
450 ... 600	11	15
600 ... 800	15	22
800 ... 1,000	22	30
1,000 ... 1,500	30	45
1,500 ... 2,000	40	60
2,000 ... 3,000	50	75
3,000 ... 4,000	60	90
4,000 ... 5,000	80	120
5,000 ... 6,000	100	150
6,000 ... 7,000	120	180
7,000 ... 8,000	140	210
8,000 ... 9,000	160	240
9,000 ... 10,000	180	270
10,000 ... 12,000	200	300
12,000 ... 14,000	220	330
14,000 ... 16,000	250	375
16,000 ... 18,000	280	420
18,000 ... 20,000	310	465
20,000 ... 25,000	350	525
25,000 ... 30,000	400	600
30,000 ... 35,000	450	675
35,000 ... 40,000	525	785
40,000 ... 45,000	600	900
45,000 ... 50,000	675	1,010
50,000 ... 60,000	750	1,125
60,000 ... 70,000	900	1,350
70,000 ... 80,000	1,050	1,575
80,000 ... 90,000	1,200	1,800
90,000 ... 100,000	1,350	2,025
100,000 ... 120,000	1,500	2,250
120,000 ... 140,000	1,800	2,700
140,000 ... 160,000	2,100	3,150
160,000 ... 180,000	2,400	3,600
180,000 ... 200,000	2,700	4,050
200,000 ... 250,000	3,000	4,500
250,000 ... 300,000	3,750	5,625
300,000 ... 350,000	4,500	6,750
350,000 ... 400,000	5,250	7,875
400,000 ... 500,000	6,000	9,000
500,000 ... 600,000	7,500	11,250
600,000 ... 700,000	9,000	13,500
700,000 ... 800,000	10,500	15,750
800,000 ... 900,000	12,000	18,000
900,000 ... 1,000,000	13,500	20,250
Above £1,000,000:—for every £100,000 and fractional part of £100,000—22 and 23 Vict., c. 36, § 1,	1,500	2,250

VI. FORM TO AID IN INVENTORY AND RELATIVE OATHS.

Form to aid in the Preparation of Inventory—Party dying domiciled in Scotland—for Exhibition in the Proper Commissary Court, 48 *Geo. III., c.* 149, *sec.* 38; 21 *and* 22 *Vict., c.* 56; 23 *Vict., c.* 15; *and* 23 *and* 24 *Vict., c.* 80.

MEM.—*It is desirable that Inventories shall be written on paper the size of foolscap.*

INVENTORY of the Personal Estate, *wheresoever situated* (and of the money secured on Heritable Property in Scotland, and of money secured by Scotch Bonds, &c., excluding Executors), of (*name and description of deceased*), who died at on the day of 18 .

SCOTLAND.

I.—PERSONAL PROPERTY.

1. Cash in the house (*if deposited in Bank or invested, the proceeds to date of oath to Inventory to be given*),
2. Household furniture, silver plate, and other effects in the deceased's house, conform to appraisement (*if sold or lent on hire, price with addition of interest or hire to be given as above*), . . .
3. Stock in trade and other effects belonging to deceased, conform to appraisement (*if sold off, price to be given with the addition of interest on it as above*), .
4. Balance due to the deceased on an account current with the Bank, ...
   Interest thereon to date of death, . .
   Do. to date of oath to Inventory, .
5. Debts due to the deceased upon the following documents—
   Bond (*describe each Bond, and state interest as above*),
   Bill (*describe each Bill, and state interest as above*),
6. Book debts due to the deceased by the following parties (*name and address of the debtors, and amount due by each to be given, but only the true value of the debt to be extended out so as to affect the duty. The debts which have been recovered should be stated at the amount recovered, and the interest of the money after it has been received to the date of the oath to the Inventory should be given*), . . .
   N.B.—In all cases it is to be understood if the money realised is paid away in discharge of debts, no interest is to be given after it is so paid away.
7. Rents of heritage due by the following tenants fall-

£

ing under executry (*describe them by the crop in the case of land, and the period in the case of houses*) .

N.B.—Landed Property.—If the deceased survive Whitsunday, one moiety of the rents of the crop of that year is personal estate. If he survive Martinmas, the whole rents of that crop fall into the Executry. Where the deceased is a liferenter or heir of entail, and the rents are payable under instruments dated subsequent to 16th June 1834, a proportion corresponding to the period from the preceding term to the date of death is also personal; 4 Gul. IV., c. 22. *House Property.*—The term's rents current at the death are personal. The Apportionment Act would appear not to apply to the rents of property held by the deceased in fee simple. See *Baillie* v. *Lockhart*, House of Lords, 23d April 1855.

8. Arrears of interest of money secured on heritage by the following parties . . . .

N.B.—The terms of the Bonds, &c., will regulate whether the interest is executry to the date of death, or to the term preceding the death.

9. Shares at £100 in the Edinburgh and Glasgow Railway.

At the price of £ at date of oath to Inventory .

(*State Dividends accrued to date of oath to Inventory.*)

10. Shares at £100 of the Bank of Scotland.

At the price of £ at date of oath to Inventory .

(*Dividends as above.*)

ENGLAND.

1. Exchequer Bills, £

Do. at date of oath to the Inventory

2. East India Stock, £

(*Price as above*).

3. Three per cent. Consols, £

(*Price as above.*)

(*Dividends accrued down to the date of the oath to the Inventory to be given.*)

IRELAND.

1. Shares of the Bank of Ireland at £
2. Shares at £50 in Midland Great Western Railway, Ireland, at the price of £

(*Price and dividends as above to be given.*)

NOTE.—Documents of the debts of Foreign Governments

£

and Foreign Companies which pass from hand to hand are property where the Documents may be. Debentures or Bonds by Foreign Companies and Governments, and the title to Stocks of Foreign Companies and Governments in the possession of a party dying in Scotland—if they can be sold in the market, and the right of the purchaser completed to them in this country, are properly situated in this country and liable to Inventory Duty. See *Attorney-General* v. *Bouwens*, 4 Meeson and Welsby, 171.

Amount of Personal Estate in Scotland, England, and Ireland . . . . . £

II. Money Secured on Heritage in Scotland.

1. Bond and disposition in security dated granted by in favour of the deceased over lands in the county of (*if deceased acquired right by assignation, etc., describe title*)
2. Interest thereon to date of oath to Inventory .
3. Bond dated granted by in favour of the deceased, excluding executors (*if deceased's right is by assignation, etc., describe title*)
4. Interest as above . . . . . .

Total Amount of Personal Estate in the United Kingdom, and Money secured on Heritage in Scotland, &c. . . . . £

ABROAD.

Describe the property and where locality situated.

At , the day of , One thousand eight hundred and In presence of Esq., Commissary of the Commissariot of (*or Commissary-Depute, or the Commissary-Clerk or his Depute, or Commissioner appointed by the Commissary, or any Magistrate or Justice of the Peace within the United Kingdom or the Colonies, or any British Consul*). Appeared (*name and description*) executor of the deceased (*name and description*) who being solemnly sworn and examined, depones, That the said died at upon the day of , and the deponent has entered upon the possession and management of the deceased's estate as executor, nominated by him, along with (*design them*), and also along with (*design him*), now deceased (*or who declines to accept*), in a General Disposition and Deed of Settlement, executed by him upon the day of , registered in the Books of Council and Session on the day of , an extract whereof is now exhibited and signed by the deponent and the said , of this date, as relative hereto [*or, and the deponent has entered (or is about to enter) upon the possession and management of his personal or moveable estate, as executor qua nearest in kin (or qua relict or qua*

creditor, &c.)]: That the deponent does not know of any Testamentary Settlement or Writing relative to the disposal of the deceased's personal estate or effects, or any part thereof, other than the said [*or that the deponent knows of no testamentary settlement or other writing left by the deceased relative to the disposal of his personal estate or effects, or any part thereof*]: That the foregoing Inventory, signed by the deponent and the said as relative hereto, is a full and complete Inventory of the personal estate and effects of the said deceased wheresoever situated and belonging or due to him beneficially at the time of his death [*and of all the money secured on heritage in Scotland, and money secured on Scottish Bonds excluding executors, and money secured on Scottish Bonds or other Instruments, the rights to which have been taken excluding executors, belonging to the deceased, liable to the duty imposed by the Acts* 23 *Vict. c.* 15, *and* 23 *and* 24 *Vict. c.* 80], in so far as the same has come to the deponent's knowledge [*or, that the deponent does not know of any money or property belonging to the deceased liable to the duty imposed by the Acts* 23 *Vict. c.* 15, *and* 23 *and* 24 *Vict. c.* 80, *or that the money or property belonging to the deceased liable to the duty imposed by the Acts* 23 *Vict. c.* 15, *and* 23 *and* 24 *Vict. c.* 80, *is not accounted for in this inventory*]: That the value at this date of the said personal estate and effects situated in the United Kingdom [*and of the said money*], including the proceeds accrued thereon down to this date, is Pounds sterling, and under Pounds sterling. (If money secured on heritage shall be given up, and confirmation of the personal estate shall be required, then add, *And the value of the said personal estate and effects at this date, situated in the United Kingdom, and proceeds accrued thereon down to this date, is Pounds sterling, and under Pounds sterling.*) (If confirmation be required, *That confirmation of the said versonal estate is required in favour of the deponent and the said* .) All which is truth, as the deponent shall answer to God.

OPINION.

WE are of opinion that it is sufficient in the Inventory given up of the Estate of a person deceased for confirmation, to set forth the value of the Estate as at the date when the Inventory is given up, and that it is not also necessary to set forth the value as at the date of death. We further think that the statutory form of confirmation contained in Schedule E of the Act 21 and 22 Vict., c. 56, must be modified, in order to be in accordance with the still more recent Statute 23 and 24 Vict., c. 80, by leaving out the words "at the time of his death." The opinion of

(Signed) J. MONCREIFF.
E. F. MAITLAND.
PATRICK FRASER.

Edinburgh, 22d January 1861.

VII. FORM TO AID IN ADDITIONAL INVENTORY AND RELATIVE OATH.

ADDITIONAL Inventory of the Personal Estate, wheresoever situated (and of money secured on Heritable Property in Scotland, and of money secured by Scotch Bonds, &c., excluding Executors), of (*Name and Designation of the Deceased*) who died at upon the day of 18 .

Amount of the estate given up for duty in the inventory recorded in the Commissary Court Books of on the day of 18 .

SCOTLAND.

I. EFFECTS UNDERVALUED.

	£	s.	d.			
1. Value of the stock of wood given up in the inventory—*Item* No. at						
Produced when sold . .						
Difference						
Interest and proceeds on ditto to date of oath to this additional inventory						
2. Debt due on open account by valued in the original inventory—*Item* No. at .						
But the debt has been recovered in full						
Difference						
Interest and proceeds on ditto to date of oath to this additional inventory						

II. EFFECTS OMITTED.

1. Debts amounting to £ ranked on the trust estate of , upon which a final dividend has been declared of 12s. per pound						
Interest and proceeds to date of oath to this additional inventory						
Note.—The deceased's books did not show the existence of this debt, and the claim was not discovered until after the inventory was recorded.						
	£					

Note.—Inventory duty on the total personal estate in England, Scotland, and Ireland, and money secured on heritage in Scotland, is . . . . . £

The duty paid on the former inventory .

The duty on the additional inventory .

Mem.—It is desirable that additional inventories, as well as other inventories, should be written on paper the size of Foolscap.

FORM OF AFFIDAVIT TO AN ADDITIONAL INVENTORY.

At the day of
One thousand eight hundred and

In presence of Esq., commissary of the commissariot of
(or commissary-depute, or the commissary-clerk or his depute, or commissioner appointed by the commissary, or any magistrate or justice of the peace within the United Kingdom or the Colonies, or any British consul).

Appeared (*name and designation*) one of the executors nominated by the said deceased (or executor-dative *qua* of the deceased), who being solemnly sworn and examined, depones, that the foregoing is an additional inventory of the personal estate of the said deceased as ascertained and discovered since the day of when the original inventory of the deceased's estate was recorded in the books of the Commissary Court of the commissariot of That the deponent has not discovered any other estate or effects belonging to the deceased. That the said inventory, which is signed as relative hereto, is a full and true inventory of all the personal or moveable estate or effects of the said deceased, wheresoever situated, already recovered, or known to be existing, belonging or due to him beneficially at the time of his death [*and of all the money secured on heritage in Scotland, and money secured on Scottish bonds excluding executors, and money secured on Scottish bonds or other instruments, the rights to which have been taken excluding executors belonging to the deceased, liable to the duty imposed by the Acts* 23 *Vict.*, c. 15, *and* 23 *and* 24 *Vict.*, c. 80], in so far as the same has come to the deponent's knowledge [*or, that the deponent does not know of any money or property belonging to the deceased liable to the duty imposed by the Acts* 23 *Vict.*, c. 15, *and* 23 *and* 24 *Vict.*, c. 80—*or, that the money or property belonging to the deceased liable to the duty imposed by the Acts* 23 *Vict.*, c. 15, *and* 23 *and* 24 *Vict.*, c. 80, *is not accounted for in this inventory*]. That the value at this date of the said personal estate and effects situated in the United Kingdom [and of the said money] including the proceeds accrued on the additional property given up in this inventory down to this date is pounds sterling, and under pounds sterling. (If confirmation shall be required, *That confirmation of the said personal estate given up in this additional inventory, which amounts, with the proceeds accrued thereon, down to this date, to pounds sterling, and under pounds sterling, is required in favour of* .) All which is truth, as the deponent shall answer to God.

VIII. LEGACY DUTY.

LEGACIES, ANNUITIES, RESIDUES, &c.

To children or their descendants, or lineal ancestors...Duty p. ct.,	£1	0	0
Brother or sister, or descendants	3	0	0
Uncle or aunt, or their descendants	5	0	0
Granduncle or aunt, or descendants	6	0	0
All other relations or strangers	10	0	0

The husband or wife of the deceased is not chargeable with duty. If the legatee's husband or wife is of nearer consanguinity than the legatee, duty is payable according to such nearer relationship.—16 and 17 Vict., c. 51, § 11.

This duty is payable for every legacy out of the personal or moveable estate, or out of or charged upon the real or heritable estate of the deceased, or out of any estate which he has power to dispose of, or out of any monies to arise by the sale, mortage, or other disposition of the deceased's real or heritable estate, or any part thereof: Also for the clear residue (after deducting debts, funeral expenses, legacies, and other charges first payable thereout) of the personal or moveable estate, whether the title to such residue shall accrue by virtue of any testamentary disposition, or upon a *partial or total intestacy:* And also for the clear residue of the monies to arise from the sale, mortgage, or other disposition of any real or heritable estate, directed to be sold, mortgaged, or otherwise disposed of by any will or testamentary instrument.

Annuities commencing to be payable on the death of persons dying after 19th May 1853 are valued for legacy duty according to tables annexed to the Succession Duty Act, 16 and 17 Vict., c. 51; and annuities commencing to be payable previous to that date, by the tables annexed to the Legacy Duty Act, 36 Geo. III., c. 52.

Duty is not exigible on legacies or residues under £20; but if a legatee take two or more legacies under any testament, which shall together be of the amount of £20, each shall be charged with duty, though each or either may be separately under that amount.

N.B.—Printed forms and regulations for payment of the legacy duty will be obtained gratis on application at the Legacy Duty Office, Inland Revenue, Edinburgh; and at the offices of the distributors of stamps in the country.

IX. SUCCESSION DUTY, 16 and 17 Vict., c. 51.

The duty commenced on the death of persons dying after the 19th May 1853, and seems to be imposed on all property, both heritable and moveable, passing by death, *not liable* to the duty on legacies and successions to personal estate upon intestacy—the duty imposed by the Legacy Duty Acts.

The duty on heritable property is charged on the annual value, after allowance of the necessary outgoings (§ 22), as an annuity for the life of the successor (§ 21), which is to be valued by tables annexed to the Act.

Personal property is liable to duty according to the value of the succession, and money charged on heritage—heritable securities—is chargeable as personalty (§ 1).

Rates of Succession Duty.

Lineal issue or lineal ancestor of the predecessor, £1 per cent.

Brothers and sisters of the predecessor, and their descendants, £3 per cent.

Brothers and sisters of the father or mother of the predecessor, and their descendants, £5 per cent.

Brothers and sisters of a grandfather or grandmother of the predecessor, and their descendants, £6 per cent.

Any other person, £10 per cent.

The husband or wife of the predecessor is not chargeable with duty (§ 18), and if the successor's husband or wife shall be of nearer consanguinity than the successor, duty is payable according to such nearer relationship (§ 11).

The following are also *exemptions* from the succession duty :—

1. Successions from the same predecessor, passing on any death, not amounting in principal value to £100 (§ 18). 2. Any succession of less value than £20 in the whole (*ib.*). 3. Legacies and personal property charged with legacy duty, in respect of the same acquisition (*ib.*).

Note.—Forms of the accounts may be obtained at the Legacy Duty Office, Edinburgh, and at the offices of the distributors of stamps in the country.

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